

**Criminal Justice Directorate Circular 15/2006  
(Third Version September 2007)**

**NHS CEL (2007) 8**

26 September 2007

Chief Constables  
Directors of Social Work  
Chief Executive, Scottish Prison Service, for Prison Governors  
Chief Executives, Local Authorities  
Directors of Housing/Community Services  
Chief Social Work Officers  
MAPPA Coordinators  
MAPPA Implementation Group Contacts  
MAPPA Working Group  
Criminal Justice Managers  
Lead Officers for Throughcare  
ACPOS Sex Offender Units  
Visor Implementation Team  
Chief Officers CJAs,  
Liaison Officers CJAs  
Duty to Cooperate Working Group including:  
CoSLA, SFHA, CIHS, SACRO, SCRA, ADES  
National Accommodation Strategy Working Group  
Chief Executive, SFHA  
SE Development Department, SE Education Department  
Risk Management Authority, HMIC, HMIP, SWIA,  
Secretary to Parole Board,  
PLSRD  
Health Department Duty to Cooperate Working Group  
Health contacts (distribution as HDL(2007)19)

***Our ref: Erdm ID F1020703***

**STATUS: – IMMEDIATE - ACTION REQUIRED**

**SECTIONS 10 AND 11 OF THE MANAGEMENT OF OFFENDERS ETC, (SCOTLAND)  
ACT 2005:-  
IMPLEMENTATION OF THE MULTI AGENCY PUBLIC PROTECTION ARRANGEMENTS  
(MAPPA) IN SCOTLAND**

1. This is the **third version** of Justice Department Circular **15/2006** containing the MAPPA Guidance issued by Scottish Ministers under section 10(7) of the Management of Offenders etc (Scotland) Act 2005. This guidance has been developed in conjunction with the agencies that form the MAPPA Working Group.

2. The first version of Circular 15/2006 was issued on 2 October 2006. It was revised on 13 March 2007 and an Addendum was also issued on 30 April 2007 to allow agencies to commence using the standardised notification, referral and minute templates.

3. This third version now incorporates these standardised templates (see **Annexes**), **Part 8** on the duty to cooperate and information sharing in relation to Health services, **Part 9** on Strategic Management, Performance Management and Quality Assurance of the MAPPA, **Part 10** on transfer of MAPPA cases and a model Annual Report at **Annex I**.

4. Further minor amendments and clarifications are also covered below and reflected in the revised guidance.

## **Part 2**

### **Paragraph 14 - Prison Service attendance at Level 2 meetings**

5. Part 2, paragraph 14 explains the process for referrals from the Scottish Prison Service to the MAPPA, the importance of the ICM case conference in developing a community focused risk management plan and crucially the importance of relevant information being provided by the prison to the MAPPA. Whilst it was not envisaged that there would be routine SPS representation at level 2 meetings, there will be occasions where the nature of the case might require direct or additional input from the SPS. In those cases the MAPPA coordinator should make contact with the appropriate SPS representative to request attendance at the MAPPA meeting for that particular case or for a video or telephone conference to take place during the MAPPA meeting. If neither of the above is possible, the coordinator should discuss the case with the SPS representative and request that a further report should be provided covering the required information.

### **Paragraph 23**

6. Part 2, paragraph 23 has been amended following a request for clarification by the Scottish Prison Service about the process which should be followed for prisoners currently serving sentences of under 4 years for non-analogous offences but who have previous convictions for sexual offences. The amendment clarifies that wherever possible, and as a matter of best practice, pre-release meetings should be arranged to ensure that issues which might affect the prisoner's reintegration into the community are addressed. It is important that the SPS takes steps to engage with other agencies as there may have already been police, criminal justice social work or other social work involvement with the above category of prisoners pre-admission. Alternatively, the involvement of these agencies might be required post release. In either case, SPS has a significant role, as a responsible authority, in taking matters forward prior to release.

7. There should be pre release liaison by SPS with the police - as the responsible authority for the prisoner post release - and the relevant SOLO at the earliest possible stage in the process in order to address accommodation issues. The ICM process is designed to identify accommodation issues soon after admission (via Core Screen) and contact with the SOLO is particularly important if a short term prisoner has accommodation problems and/or risks losing his/her tenancy because of imprisonment. Additionally, criminal justice social work would also have a role to play in providing **voluntary aftercare** for this group of high priority prisoners, if such a service is requested.

### **Paragraph 29**

8. Part 2, paragraph 29 clarifies the position around the SPS responsibility to engage with other agencies in advance of the granting of home leave to prisoners. **JD Circular 01/2007** provides the details of the roles and responsibilities and process to be followed in relation to home leave.

## Part 8 - Health

9. Part 8 now reflects the work undertaken with the **Healthcare Policy and Strategy Directorate** to define the roles and responsibilities of Health services in the MAPPA. The Health service is under a wider **duty to cooperate** in the joint arrangements for managing and assessing risk from those offenders who fall within the categories prescribed in the legislation but who are not restricted patients. These provisions were commenced in respect of sex offenders subject to the notification arrangements on **2 April 2007**.

10. Health services will be a **responsible authority** in respect of restricted patients who also fall within the defined categories of offender in section 10 of the Management of Offenders (Scotland) Act 2005. These provisions have **not yet commenced** and further guidance will follow once the revised guidance on the Care Programme Approach has been issued.

11. **NHS HDL (2007) 19** issued 28 March 2007 requested Health Boards to appoint MAPPA Health representatives at senior clinician and senior manager level and to commence work on identifying convicted sex offenders in the hospital system who would be subject to MAPPA from 2 April 2007. MAPPA Implementation Groups should be engaging with Health partners on the development of the memorandum of understanding and protocols.

12. This revised Guidance will be placed on the Scottish Government website and an up to date list of MAPPA co-ordinators and representatives from each area will be held on the web and available at <http://www.scotland.gov.uk/Publications/2007/08/Contacts>.

13. An Appendix to Part 8 includes details of health representatives on MAPPA Implementation Groups who have already been identified. We would be grateful if any changes to this list could be notified to [rosemary.toal@scotland.gsi.gov.uk](mailto:rosemary.toal@scotland.gsi.gov.uk) and copied to [bruce.sutherland@scotland.gsi.gov.uk](mailto:bruce.sutherland@scotland.gsi.gov.uk)

## Part 9 - Strategic Management, Performance Management and Quality Assurance

14. It is crucial that arrangements are put in place between the responsible authorities at a senior and strategic level to meet the requirements of section 11 of the legislation to review the operation of the arrangements. The purpose of Part 9 is to assist in the development of the strategic management function and the Performance Management and Quality Assurance tasks which need to be built into the MAPPA process.

## Part 10 – Transfer of MAPPA Cases

15. The purpose of Part 10 is to clarify the arrangements for transfer of offenders, subject to MAPPA, between areas in Scotland and in cross border cases.

## Annexes E and H - Risk Management Authority (RMA) Definition of Risk of Serious Harm

16. Annexe E on Risk Assessment and Management has been updated by the Risk Management Authority. The MAPPA meeting template (Annex H) has also been revised to reflect the amendment by the RMA of the risk of **serious harm** and related definitions. Please ensure that this revised template is now used rather than the version issued with the Addendum on 30 April 2007.

## Proposed Annual Report Structure - Annex I

17. The template at Annex I provides guidance on the preparation of the Annual Report and the required statistical information in line with section 11 of the Management of Offenders (Scotland) Act 2005. Responsible Authorities should ensure that data collection systems are in place to ensure that the required information is readily accessible and can be provided to the MAPPA Coordinator for collation into the first Annual Report which will cover the period up to April 2008. MAPPA coordinators should also ensure they have access to the reporting mechanisms contained in VISOR to assist in the collection of statistical information.

### Other Issues

#### Duty to Cooperate

18. The last version of the guidance requested that MAPPA Implementation Groups take forward work to develop the **memorandum of understanding** and the **protocols on information sharing** required to support the duty to co-operate.

19. Implementation groups are reminded that the model memorandum in Part 6 is a template showing the format and areas to be covered by the memorandum. This model has to be populated by the responsible authorities and the duty to cooperate agencies to reflect how the arrangements will be delivered locally. The development of the memorandum and protocols on information sharing must therefore be taken forward in consultation with the duty to cooperate agencies to ensure a partnership approach.

20. In developing the protocols on information sharing between the responsible authorities, Sex Offender Liaison Officers (SOLOs) and housing providers, your attention is drawn to the Annex to the National Accommodation Strategy for Sex Offenders (NASSO) at Part 6 which sets out the standard information to be included.

#### Parole Board

21. Experience since the introduction of the Multi Agency Public Protection Arrangements has highlighted the need for more work to be undertaken within the MAPPA Working Group in developing guidance which will strengthen and clarify the interaction between Integrated Case Management, the Parole Board and the MAPPA.

22. In advance of further guidance and from discussion with the Parole Board Executive you are asked to note the following:

In recommending to Scottish Ministers the licence conditions for offenders, the Parole Board takes into account information from the prisoner's dossier which includes information from the prison service, community based social work, outputs from the pre-release planning arrangements from the Integrated Case Management process and any representations made by the prisoner in relation to the information received from these sources. If particular licence conditions are requested or suggested by, for example, community based social work, an explanation requires to be given for each condition requested or suggested. This is because, in accordance with Human Rights legislation, the Parole Board can only recommend the attachment of any condition

which would be in accordance with the law, it has a lawful aim and it would be a proportionate means of achieving that aim. Any condition also has to be specific (so that the offender knows exactly what he and others are required to do and not do) and enforceable. It is expected during this process that recommendations in the dossier are informed by the results of risk assessment and supported by risk management plans which will provide interventions and supports to the offender on release in the community and have due regard to public protection. During the period of supervision, if the nature of the risk or other factors in the management of the offender change and require a review of the licence conditions, the request must be supported by detailed justification for the change. This is for the same reasons that a justification requires to be given when licence conditions are being requested on initial release as described above. Such requests should be submitted in accordance with normal timescales to the Parole and Life Sentence Review Division in the Scottish Government and not directly to the Parole Board.

Because of their confidentiality, MAPPA minutes should not, as a matter of routine be sent direct to the Parole Board, but via Scottish Ministers. If there are cases where a request for a change in conditions of licence would be assisted by information from the MAPPA then, where possible, it can be of benefit for the Board to see the complete narrative. For cases that do not involve a Tribunal of the Board, under Rule 6 of the Parole Board Rules, there is provision, subject to certain conditions, for a non-disclosure notice to be issued by Scottish Ministers informing the prisoner that certain information had been withheld, and giving the prisoner insofar as is practicable without prejudicing the purposes for which the information is not disclosed, the substance or gist of the damaging information. The Rule also applies to the Parole Board who may also issue such a notice. If the conditions of Rule 6 are not met, then all the information given to the Board must be disclosed to the prisoner.

**For cases involving a Tribunal, it should be noted that the provisions of Rule 6 of the Parole Board Rules do not currently apply. Thus it should be noted that in such cases any material provided to the Board must also be provided to the prisoner.**

### Freedom of Information (FOI) Requests

23. MAPPA Coordinators should note that Freedom of Information (FOI) requests should be handled by the receiving agencies in the normal manner. Where the request comes directly to the MAPPA coordinator and the information requested is held on ViSoR, the request should be forwarded to the relevant police force for action.

### Training

24. Training for MAPPA chairs and coordinators on risk assessment and management took place on 7 September 2007. Another course is being held on 28 September 2007 and further consideration will be given to holding a further course if interest is noted.

### Contacts

25. If you have any queries regarding the MAPPA Guidance, please address these to your representative on the MAPPA Working Group in the first instance. The contact details for members are provided below.

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# **MAPPA GUIDANCE**





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## **MULTI AGENCY PUBLIC PROTECTION ARRANGEMENTS (MAPPA) GUIDANCE**

### **Introduction**

1. This guidance provides the model to support the provisions in Sections 10 and 11 of the Management of Offenders (Scotland) Act 2005. The provisions fulfil recommendation 49 of the report of the Expert Panel on Sex Offending, “to place a statutory duty on Chief Constables and Chief Social Work Officers to jointly establish arrangements for assessing, monitoring and managing risk”. This was further endorsed by the multi agency membership of the Information Sharing Steering Group, chaired by the Solicitor General, and extended to include the Scottish Prison Service and the Health Service in respect of mentally disordered offenders as well as the police and local authorities as responsible authorities.
2. The need for the introduction of statutory provision and a partnership approach to the management of the risk posed by sex and violent offenders has been further highlighted by recent high profile sex offender cases in which it was apparent that the capacity of individual agencies to assess, plan and manage the needs of offenders who pose a risk to the community is diminished because of the natural limit imposed by each agency’s statutory function and professional boundaries.
3. The legislation provides the framework within which the measures taken by the Executive and its partner agencies to improve public protection can be delivered in a cohesive and consistent way.
4. The Scottish Executive chaired Tripartite Group, with membership from the Scottish Prison Service, the Association of Directors of Social Work and the Association of Chief Police Officers Scotland, has been overseeing the work to prepare this guidance in order to implement the legislation.
5. The Tripartite Group also agreed that the model for the establishment of the joint arrangements should be developed along the lines of those of the **Multi Agency Public Protection Arrangements (MAPPA)** in operation in England and Wales. Following agreement during the passage of the legislation, the provisions will be commenced in the first instance for sex offenders.

### **MAPPA Model <sup>1</sup>**

6. The fundamental purpose of MAPPA is public safety and the reduction of serious harm. The protection of children, vulnerable adults and other victims is paramount. Like other effective multi-agency processes, the MAPPA offers the potential for a co-ordinated approach to the management of sexual and violent offenders in the community who pose a risk of serious harm to others.
7. Rooted in the Human Rights Act principles of necessity and proportionality, MAPPA acknowledges the complex nature of much serious re-offending behaviour which often

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<sup>1</sup> Home Office Probation Circular 54/2004

prevents any single agency from being able to deliver an effective risk management plan alone. Rather MAPPA recognises that a coordinated risk management plan combining members of the Responsible Authorities and the duty to co-operate agencies offers the best chance of achieving public safety.

8. MAPPA are founded on the basis of targeting resources where they are most required. The guidance identifies three key stages of MAPPA notification and referral and the arrangements, which underpin them. But it should be borne in mind that following notification to the MAPPA, onward referral of prisoners/offenders to level 2 or level 3 (MAPPP) must be on the basis of the assessment of the **risk of serious harm** posed by that individual. Definitions are as follows:

**VERY HIGH RISK** - There is imminent risk of serious harm. The potential event is more likely than not to happen imminently, and the impact could be serious.

**HIGH RISK** - There are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact could be serious.

**MEDIUM RISK** - There are identifiable indicators of risk of serious harm. (Name) has the potential to cause harm, but is unlikely to do so unless there is a change of circumstances

**LOW RISK** - Current evidence does not indicate likelihood of causing serious harm

### **The Legislation**

9. Sections 10 and 11 of the Management of Offenders (Scotland) Act 2005 (See Annex A) require the Scottish Prison Service, local authorities and the police as responsible authorities in the area of a local authority to jointly establish arrangements for the assessment and management of risks posed by sex offenders subject to the notification requirements of the Sexual Offences Act 2003, violent offenders convicted on indictment and subject to a probation order or supervision following release from prison and offenders whose conviction leads the responsible authorities to believe they may cause serious harm to the public.

10. In addition, the legislation also provides the Health Service with a statutory function as a responsible authority to establish joint arrangements for the assessment and management of risk posed by mentally disordered restricted patients within the above defined categories. The arrangements for the management of mentally disordered restricted patients will be dealt with under the Care Programme Approach to which this strategy also applies.

### **Duty to Co-operate**

11. Sections 10(3) and (4) of the Act provide that in establishing and implementing the joint arrangements, the responsible authorities must act in co-operation with such persons as Scottish Ministers specify in an order made by Scottish Statutory Instrument. As a result it will be the duty of those persons (includes agencies and bodies) specified in the order to co-operate with the responsible authorities. Co-operation must be compatible with the exercise by those persons and authorities of their other statutory functions. It is intended as a means of enabling different agencies to work together but within their legitimate role whilst retaining their responsibility for action.

12. The duty to co-operate is reciprocal. It will require the responsible authorities to co-operate with the duty to co-operate agencies and, in turn, those agencies to co-operate with the responsible authorities. Agencies to be named under the duty to co-operate SSI include: registered social landlords, Scottish Children's Reporter Administration (SCRA), electronic monitoring providers and voluntary organisations providing services to or on behalf of a responsible authority in connection with the assessment and management of the risks posed by any person to whom section 10 (1) applies. The health service will also be under a duty to co-operate for offenders who fall within the categories identified above but are not mentally disordered.

### **Memorandum**

13. The duty to co-operate will be underpinned by a Memorandum prepared by the responsible authorities in consultation with the duty to co-operate agencies in each local authority area. The purpose of the memorandum is to enable the practicalities of co-operation to be agreed locally to ensure that there is a clear and agreed understanding by all involved of their roles and responsibilities. It is envisaged that the Memorandum will also include the Concordat on Sharing Information on Sex Offenders and be supported by protocols on sharing information. Guidance on the development of model protocols has already been issued to agencies but is also included in the MAPPA guidance at Part 7.

### **Definition of Co-operate**

14. Section 1(2) of the Act defines "co-operate" to **include the exchange of information.**

### **Review and Reporting arrangements**

15. Section 11 of the Act requires the responsible authorities to keep the joint arrangements under section 10 under review for the purpose of monitoring their effectiveness, and making any necessary changes. The responsible authorities are also required to make a joint report on the discharge of their functions under section 10, to publish the report in the area of the local authority, and submit the report to the Community Justice Authority. The report must include details of the arrangements established and information required by Scottish Ministers. Section 3(10) of the Act requires the Community Justice Authority to send a copy of the report to Scottish Ministers. (In practice this will be submitted to the National Advisory Body which is chaired by the Cabinet Secretary for Justice.)



## **MAPPA GUIDANCE**

### **PART 1**

#### **Identification of Offenders and the Responsible Authority;**

##### **Identification of Offenders**

1. The categories of offender subject to Multi Agency Public Protection Arrangements are defined in the legislation (see Annex A). Broadly, there are 3 categories:

Category 1: Registered sex offenders

Category 2: Violent offenders

Category 3: Other offenders

2. Mentally disordered restricted patients who are also sexual or violent offenders and fall within categories 1 to 3 are also to be included in the joint arrangements operated by the responsible authorities. These offenders will be subject to the Care Programme Approach arrangements operated by the health service as a responsible authority in collaboration with the other responsible authorities and those agencies under a duty to co-operate. It should be noted that the category of offenders listed above who require medical intervention but who are not categorised as mentally disordered restricted patients under the Act will fall under the health service duty to co-operate. The duty to co-operate is explained in **Part 6** of the guidance and Part 8 covers the specific roles and responsibilities of Health services.

3. The identification of the offenders who will fall within the Multi Agency Public Protection Arrangements (MAPPA) is the critical first step. This guidance provides the responsible authorities and other agencies with the legislative framework and model to identify the relevant offenders who will fall within the arrangements.

##### **Category 1: Registered Sex Offenders**

4. For this purpose, sex offenders are those offenders subject to the notification requirements under Part 2 of the Sexual Offences Act 2003.

##### **Category 2: Violent Offenders**

5. For this purpose, violent offenders are defined as those

- Convicted on indictment of an offence inferring personal violence who are subject to a probation order, or who are or will be on release from prison, subject to statutory supervision in the community,
- Persons acquitted on grounds of insanity or found to be insane following proceedings taken on indictment. In this instance, the health service is a responsible authority under the Care Programme Approach in relation to those who fall within these prescribed categories of offender, including those acquitted in proceedings on indictment on the grounds of insanity and subject to a restriction order and those where a plea, in bar of trial on grounds of insanity, is successfully made, who are

subject to any of the orders or directions specified in the Management of Offenders Etc (Scotland) Act 2005 section 10 (11) paragraphs (a) to (d). (See Annex A).

### **Category 3: Other offenders**

6. This category comprises other offenders not in Category 1 or 2 **who have been convicted of an offence** and if, by reason of that conviction they are considered by the responsible authorities to **be a person who may cause serious harm** to the public at large. This category of offender is determined by the responsible authorities rather than automatically by the sentence or disposal imposed by the court. The responsible authorities must therefore consider the two aspects i.e. the conviction **and** the risk of serious harm. The offence may have been committed in any other jurisdiction and could be considered to fall within the joint arrangements.

### **The Responsible Authorities**

7. The Responsible Authorities defined by section 10(7) of the Management of Offenders Etc. (Scotland) Act 2005 are the Chief Constable, the local authority (primarily, though not exclusively the Chief Social Work Officer), the Health Board and the Scottish Prison Service. They are required by section 10(1) to jointly establish arrangements for the assessment and management of risks posed by certain offenders within a local authority area. Each responsible authority will have a part to play in the assessment and management of risk and each case will have a lead responsible authority as defined in the following paragraphs.

8. The category of offender described above will be either subject to a community disposal, or have received a custodial sentence and may or may not be subject to supervision on release.

#### Scottish Prison Service

9. The Scottish Prison Service, or private sector equivalent, will be the Responsible Authority for the above listed offender categories whilst they are in prison.

#### Local Authority

10. For those offenders convicted on indictment and subject to a probation order for a violent offence or who will be subject to supervision on release from prison, the Responsible Authority will be the local authority. Section 10(7) defines the "responsible authorities" who are required, by section 10(1), to work together to establish joint arrangements for the assessment and management of the risks posed by sex and violent offenders. One of the "responsible authorities" is the local authority. It is envisaged that the responsibility for working on the joint arrangements will lie primarily with the Chief Social Work Officer. However, other local authority services, such as education and housing services, will be required to cooperate in the implementation of this work to discharge the corporate responsibility under this function. Each local authority will need to make internal arrangements to ensure that this takes place effectively.



### The Police

11. The police have the primary responsibility for the operation of the sex offender notification scheme, and where an offender in the community is subject to no other form of statutory supervision, then the police assume the role of responsible authority for that offender.

### Health

12. The Health service will be the responsible authority for mentally disordered restricted patients who are also sexual or violent offenders. These offenders will be subject to the Care Programme Approach.

### **Identification of Responsible Authority**

13. In cases where a sex offender is subject to statutory supervision in the community by local authority criminal justice social work **and** is also subject to sex offender registration requirements, then the responsibility for the case is shared between **both the police and local authority social work** services who must put in place appropriate and robust liaison arrangements for risk assessment and management. When criminal justice social work supervision ends and the risk of serious harm remains high, the police will become the responsible authority but the offender will still be dealt with within the MAPPA.

14. For the vast majority of offenders in the community, the identification of the Responsible Authority and the appropriate local authority area will depend on their place of residence. Decisions around public protection issues, such as sex offender registration and licence supervision help clarify this so that there is no doubt which one of the Responsible Authorities is responsible for each case.

15. Identification of the Responsible Authority is a priority particularly in the small number of cases where offenders are itinerant, have no fixed residence or where it is not clear cut which local authority area has responsibility. (In cases where the offender is or will be subject to supervision by criminal justice social work, the ordinary residence principles laid down in National Objectives and Standards for Throughcare apply.)

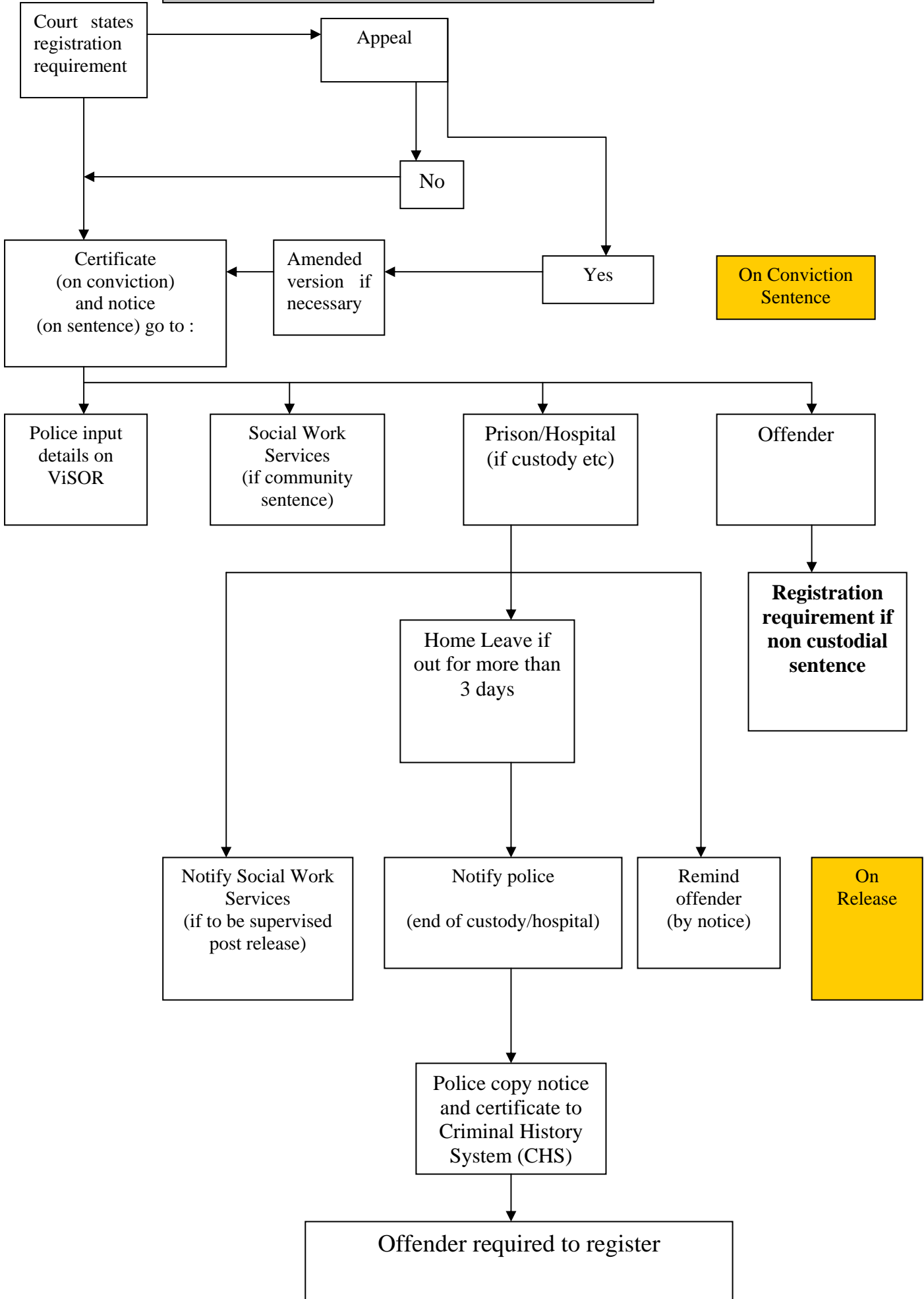
16. In a small number of cases, offenders may legitimately be of concern or interest to more than one of the responsible authorities at the same time, for example where a registered sex offender regularly visits an address away from his home address and in another area. In these circumstances, the police force that has registered the offender and in which the offender lives has responsibility for liaison with its counterpart to ensure that relevant information concerning risk assessment and management is shared and continually updated. Similar issues of co-ordination may also arise where a known victim lives in an area that is different from the responsible authority for the offender. In such circumstances clear lines of communication must be established. The purpose of this discussion is not only about sharing appropriate information; it is also about ensuring that there is proper joint planning, monitoring and intervention. The level, nature and duration of these actions will vary depending on the needs of each individual case.

### **Role of other Agencies – Courts**

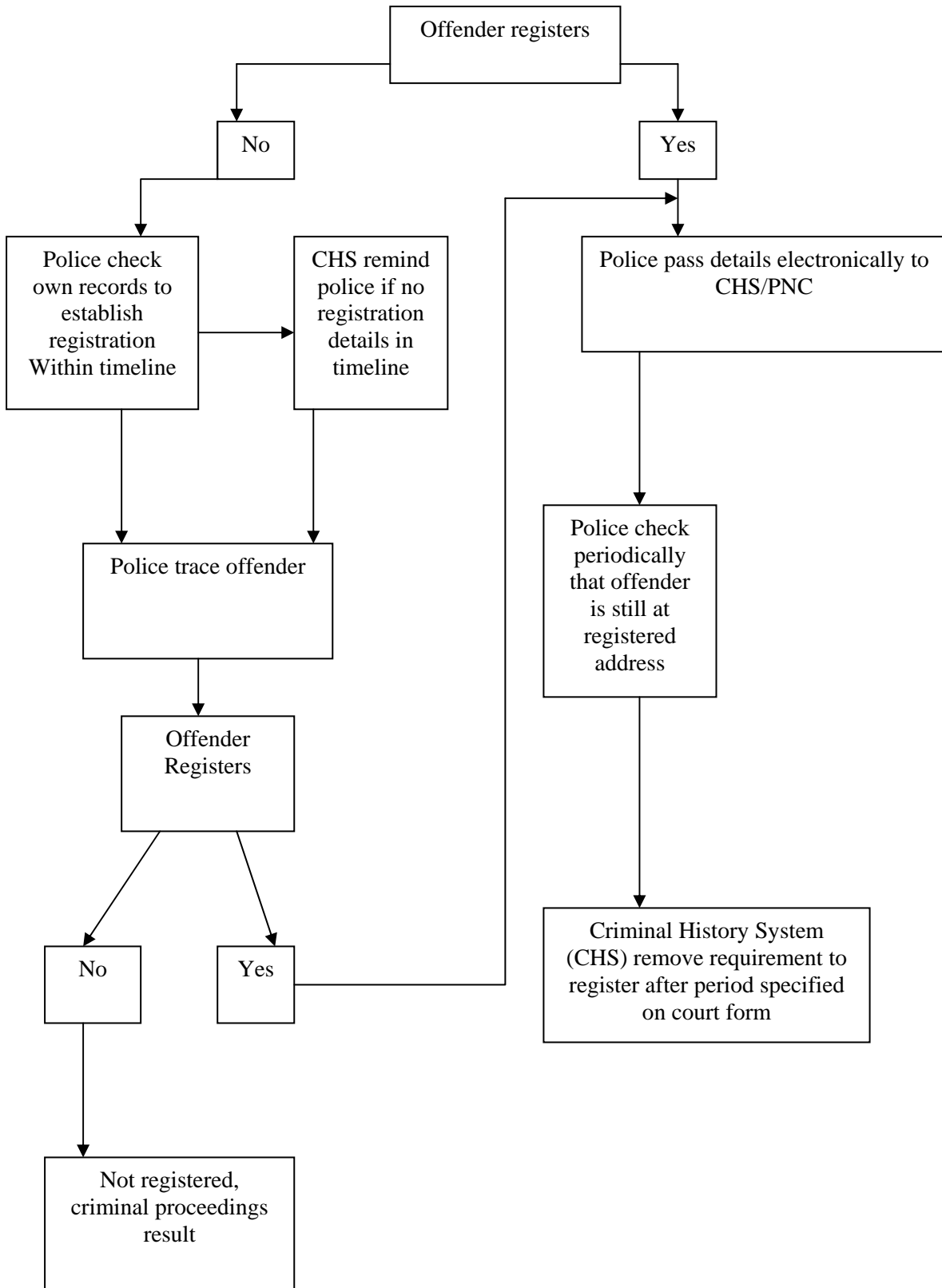
17. When an offender is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003, the court is required to issue the offender with a certificate of conviction or finding and a notice of requirement to register. A copy of the certificate together with the notice of requirement must also be copied to the police. In addition, a copy of both the certificate of conviction or finding and the notice must be attached to any extract warrant for imprisonment, or detention in hospital, and given to the relevant local authority (i.e. the authority responsible for supervising, or providing throughcare to the offender) where there is a community disposal or where the offender aged under 18 has been sent to secure accommodation. On release from prison or detention in hospital, the responsible authority is required to notify the police of the sex offender's date of release whether this is temporary or final. The process for referral to the MAPPAs for persons being released from prison is contained in Part 2 of this guidance.

Charts 1 and 2 demonstrate the sex offender Registration process.

# Sex Offender Act Pre Registration Process Chart 1



## Sex Offender Registration Process Chart 2



## PART 2

### Process of identifying and managing sex and violent offenders before notification to the MAPPA

#### Community disposals involving local authority social work services

1. This section explains the existing process for identifying and managing offenders prior to notification to the MAPPA. The collation of relevant information assists the responsible authorities in making an informed decision on the level at which the offender may be managed.

2. In many cases when a sex or violent offender (Category 1 and 2) is sentenced to a **community disposal**, the responsible local authority will have prepared a Social Enquiry Report for the Court. This report will contain, amongst other things, a **risk assessment** which describes the risks posed by the offender and a suggested plan for the management of that offender. This applies specifically to Probation Orders, Community Service Orders and Drug Treatment and Testing Orders. In the case of Orders where no SER is required (e.g. Supervised Attendance Orders and Community Reparation Orders) there is still a need to share information to inform the risk management plan.

3. Additionally, when the offender on a community disposal is subject to the notification requirements of part 2 of the Sexual Offences Act 2003, the police will also be involved in the ongoing assessment and management of the risk posed by that person, as a Responsible Authority. For these sex offenders an initial case discussion/conference between the police and local authority social work service will be held to share information and agree risk assessment and risk management plans.

4. In collating information, the police will access information and intelligence from sources such as ViSOR, the Scottish Intelligence Database and other police data systems. The relevant social work service will check ViSOR and all their records and liaise with any other agency (including health services) which may have information about the offender. This will ensure that any further relevant information held about the offender is shared. It will also establish whether any child is associated with the offender or living at his address. This equally applies to vulnerable adults. If the offender suffers from a mental illness or disability, community care services should be contacted. If the offender has been convicted of an offence against his own or other children or has been involved in previous child protection inquiries, children and families social workers should also be contacted for information. Where the offender has been imprisoned in the last 12 months in relation to other offences and no community integration plan is available, information should be obtained from SPS (or the equivalent private provider) via the prison social work unit, and psychological services. Where the offender has been detained in hospital, the Responsible Medical Officer should provide any relevant information. The agencies with a duty to cooperate are defined by Scottish Statutory Instrument although this does not preclude information being sought from others. Information should also be collected on the offender's housing position, as housing provision is crucial in ensuring that community safety is maximised. This is because the supervision, management and monitoring arrangements are most effective when the offender is in stable accommodation. The role of housing is important because local offices are often the first port of call for concerned residents. Social work services and housing staff should work closely together to address the offender's accommodation needs. In doing so the

guidance in the National Accommodation Strategy for Sex Offenders (NASSO) (contained in Part 6 of this Guidance) should be followed **in respect of all levels.**

5. The collation and analysis of this information will assist the responsible authority to determine the level at which risk is assessed and managed (i.e. level 1, 2 or 3). It will also help identify the frequency/nature of contact with the offender, the allocation of specific tasks and the frequency of review. If it is considered that the offender is low or medium risk and that risk can be managed by one responsible authority then the offender need only be notified to the MAPPA coordinator as a level 1 offender. If it is considered that the offender's risk requires management under level 2 (MAPPA) or level 3 (MAPPP) arrangements, referral should be made to the MAPPA co-ordinator accordingly. (The criteria and process for notification and referral are described in Part 3)

6. National Objectives and Standards should be followed in relation to supervision arrangements for those subject to probation, DTTO or other supervision in the community. ACPOS National Standard Operating Procedures should be followed in relation to the joint visit by police and social work to sex offenders. The purpose of this visit is to outline the roles and responsibilities of both agencies i.e. the police in respect of the notification/registration requirements and social work in relation to supervision. A further joint visit will also be held at the conclusion of statutory supervision. This is the minimum level of joint visits required. The initial case discussion will determine the appropriate level of joint visits necessary for each case.

7. Where registered sex offenders are subject to a Community Service Order (CSO), Restriction of Liberty Order (RLO), Supervised Attendance Order (SAO) or Community Reparation Order (CRO) they will not be subject to direct supervision by qualified social workers. However, it is important that a risk management plan is developed and the level at which risk is to be managed is decided. Where the offender is to be managed at level 1, the responsible authority should consider what involvement is also required from the agency responsible for the management of the court order.

8. Registered Sex Offenders not subject to community disposal or supervision are normally those offenders whose supervision order has expired but they are still on the sex offender register, or those who have received a short term sentence not more than six months. The police are the responsible authority and will decide on the level of risk with input from other agencies as necessary. This will, where necessary, inform the notification and referral to the MAPPA.

### **Sexual Offences Prevention Orders (SOPOs) and Risk of Sexual Harm Orders (RSHOs)**

9. Persons subject to a SOPO or **who have been convicted of breaching** a RSHO (or **are subject to** any other Order which requires the offender to register their details under the Sexual Offences Act 2003) will fall within the criteria for the MAPPA. As with community disposals the police will wish to liaise with local authority social work services in the risk assessment and management process for those subject to these orders.

## **Imprisonment**

10. When a sex or violent offender (Category 1 and 2) is sentenced to a period in custody the Scottish Prison Service is the Responsible Authority during sentence and the new Integrated Case Management (ICM) procedures ensure early engagement with criminal justice social work, the police and other agencies for pre release planning purposes.

11. For those offenders who will be subject to a period of post release supervision, the SPS will at the start of sentence, identify and designate a local authority who will be responsible for the supervision of the offender on release. The designation of a local authority is made according to ordinary residence principles which involve consultation with the appropriate local authority. The local authority will thereafter appoint a named supervising officer responsible for making and maintaining contact with the prisoner and, where appropriate, his/her family during and after sentence.

12. The Integrated Case Management (ICM) system will provide the joint case management structure between the SPS and community based criminal justice social work for prisoners subject to the notification requirements of the Sexual Offences Act 2003 or those offenders convicted of violent offences and sentenced to 4 years or more and subject to supervision on release. Also included in the ICM process are those prisoners subject to supervised release orders and extended sentences regardless of the length of sentence. These categories are recorded by the SPS on the Prison Record System (PR2). Whilst in custody the case will be managed jointly between the Scottish Prison Service (or private sector equivalent) and Criminal Justice Social Work, both prison based and community based.

13. The enhanced part of ICM (i.e. those who are subject to statutory supervision) is predicated on a “case conference” approach to risk assessment and management. Central to this approach is inter-agency working which brings together the responsible authorities (SPS, Local Authority and police) and other relevant agencies in order to develop a rigorous and robust risk assessment and risk management plan. The case conference approach places the offender at the heart of the process and seeks to seriously engage them in the development of an appropriate plan which addresses their risks and needs. It will be important to pay particular attention to child protection and vulnerable adult concerns. The ICM case conferences will take place within the prison environment.

14. However, as a prisoner who has been referred to the MAPPA nears their date of liberation, it will be appropriate for the level 2 or level 3 (MAPPP) meetings to be held in the local authority area where the person is to be released. It is critical that the relevant information is available from the prison to inform these meetings. SPS representatives will attend Level 3 MAPPPs. Whilst it is not envisaged that there will be routine SPS representation at level 2 meetings, there will be occasions where the nature of the case might require direct or additional input from SPS. In those cases the MAPPA coordinator should make contact with the appropriate SPS representative to request attendance at the MAPPA meeting for that particular case or for a video or telephone conference to take place during the MAPPA meeting. If neither of the above is possible the coordinator should discuss the case with the SPS representative and request a further report covering the required information. This process will be adopted for both sex offenders and violent offenders.

15. The ICM pre-release Case Conference is scheduled to take place three months prior to the prisoner’s release. This allows all the agencies sufficient time to engage with other

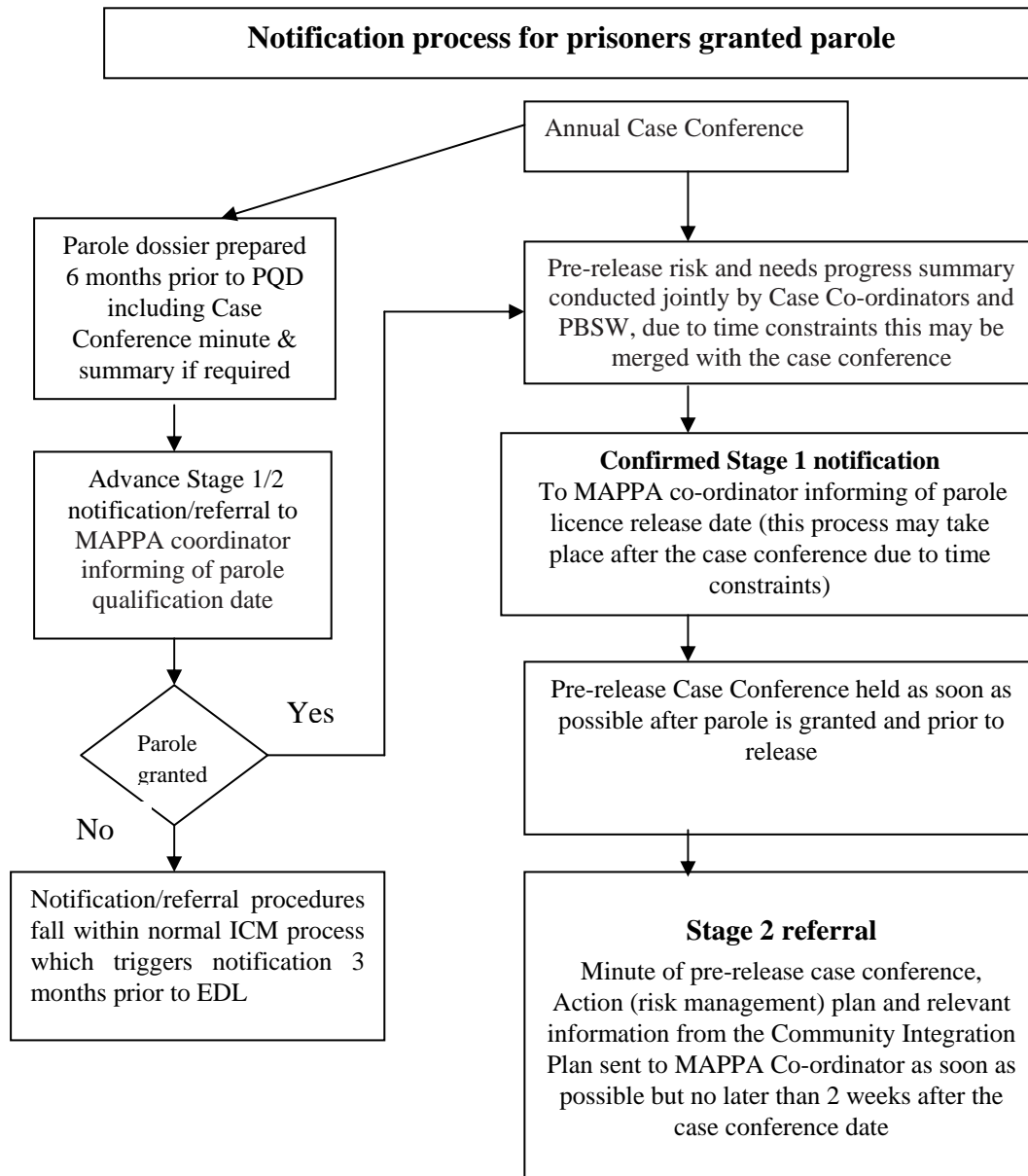
service providers and plan any actions necessary prior to the prisoner's eventual release from custody. The ICM pre-release Case Conference should therefore not be seen as the end point of the joint activities, rather the beginning of a "transition phase" between custody and the community. Prison and community based staff will have tasks which they are required to fulfil as part of the Community Integration Plan (CIP) (e.g. confirmed notification to the MAPPA Co-ordinator in appropriate cases) after the case conference and before the prisoner is released from custody. It should be noted that whilst the case conference sets the actions, the responsible authorities and agencies involved must ensure that those actions are carried out and that the arrangements for the management and supervision of the offender are in place and kept under review. National Objectives and Standards for Criminal Justice Social Work and the relevant ACPOS Standard Operating Procedures also apply.

16. On release, the prisoner's level of contact with the supervising officer, the nature of that contact and the programmed work/interventions in which they will be required to participate will be determined by the following factors:

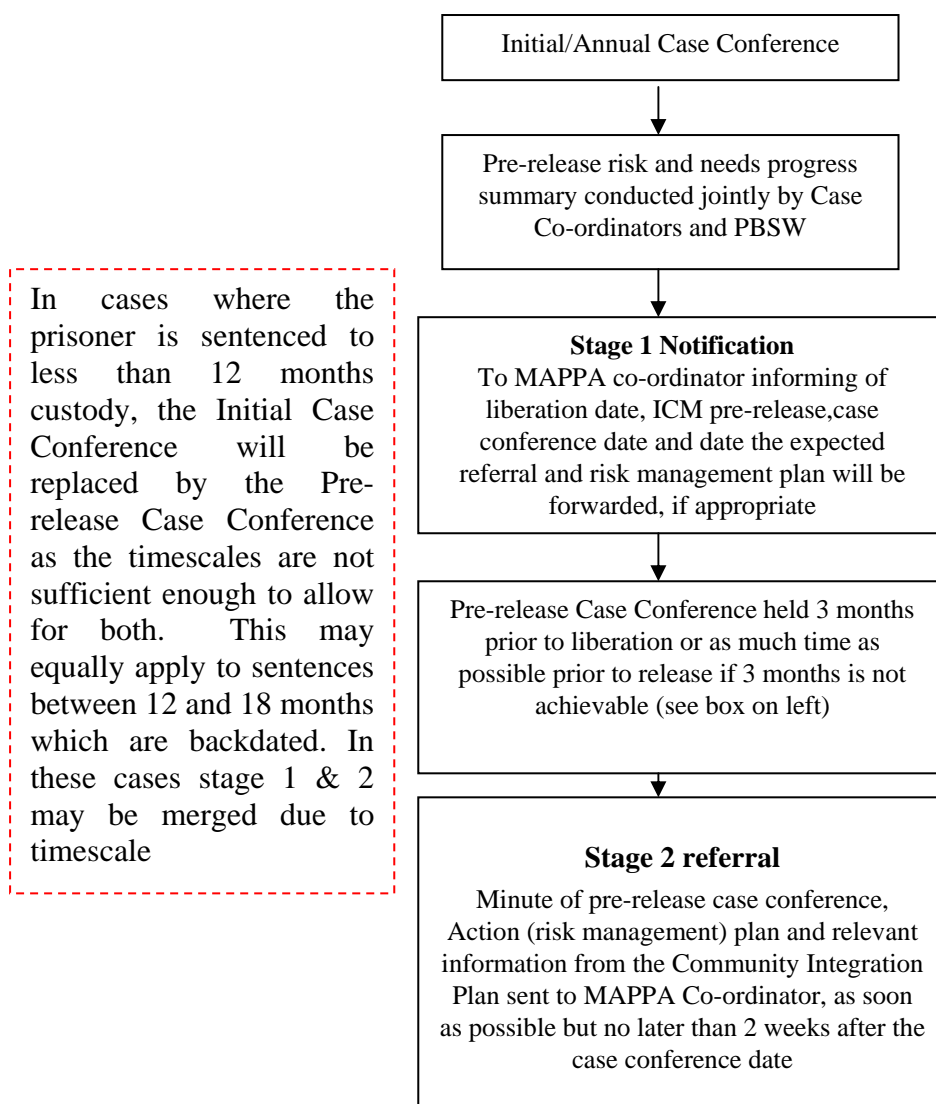
- (1) the level of risk that the prisoner poses
- (2) the prisoner's assessed needs and
- (3) the specific requirements of the licence/order to which they are subject.



## Integrated Case Management Process Relating to MAPPA



**Notification process for prisoners released on Earliest Date of Liberation**



17. The process for life prisoners, indeterminate sentence prisoners and those made subject to an Order of Lifelong Restriction (OLR) is similar to the one described in the flowchart for parolees. It is not easily represented in diagrammatic form because of the complex nature of the existing procedures for these prisoners. However, the following information clarifies how the MAPPA process applies to them during the custodial period.

18. Life prisoners, indeterminate sentence and OLR prisoners will have a “punishment part” set by the Court, which stipulates the amount of time in custody the prisoner must serve in order to satisfy the requirements of retribution and deterrence. After this period of imprisonment has been served, release will be dependent on the assessed risk the prisoner poses to the community. A Tribunal of the Parole Board (e.g. the Life Prisoner Tribunal) makes this decision after having reviewed the prisoner’s dossier. If the decision is to release the prisoner, then Scottish Ministers are obliged, by law, to release the prisoner as soon as reasonably practicable on receipt of the direction to release. In practice, this will normally be within 24 hours and no later than 48 hours from receipt of the direction. The Scottish Ministers have no discretion to exercise in such cases. If the decision is that the prisoner should not be released, then a date for a further review of the case will be set.

19. The enhanced ICM process applies to life prisoners, indeterminate sentence and OLR prisoners, as it does to those released on other statutory licences. In terms of the interface with the MAPPA process, advance notification to the MAPPA Co-ordinator should occur at the annual ICM case conference **before** the punishment part expires. Confirmed notification to the MAPPA Co-ordinator should follow immediately after the Tribunal has made the decision to release the prisoner. If the Tribunal decides not to release the prisoner and sets a further date to review the case, then the notification process follows a similar pattern: advanced notification at the ICM case conference prior to the Tribunal review date and confirmed notification takes place immediately after the decision to release is known.

20. There are particular challenges in making the MAPPA notification process interface with the logistical requirements for life prisoners. However, it should be remembered that Tribunals are oral hearings at which the prisoner may be legally represented and at which the Scottish Ministers are represented by an official of the Criminal Justice Directorate (Parole and Life Sentences Review Division), supported by an official from the Scottish Prison Service. Although these latter individuals will not be able to advise whether the Tribunal will release the prisoner, they will be able to inform if they will or will not be challenging any decision to release.

21. There will be a need to ensure that there is interface between the risk management plans for those subject to OLR, the Parole Board and the MAPPA arrangements. The case conference approach and multi agency involvement in assessing risk and preparation of risk management plans should ensure that there is consistency in the information provided to the Risk Management Authority and the Parole Board. However, it will be important to establish a dialogue to ensure that those bodies receive the relevant information and that the MAPPA can manage the risk.

22. A Risk Management Plan (RMP) is prepared for offenders subject to an OLR to ensure that risk is properly managed on a multi-disciplinary basis. Agencies with statutory responsibilities for the offender are to collaborate on the preparation of the RMP. Whilst the offender is in custody SPS will be responsible for writing the RMP and submitting it to the

RMA. The RMP must provide an assessment of the offender's risk, describe the measures to be taken to minimise that risk and how these measures will be co-ordinated. The RMP will be based on the ICM case conference's action plan. The plan will be submitted to the RMA annually for approval. Guidance on the OLR was issued by the Scottish Government Criminal Justice Directorate, Parole and Life Sentence Review Division in June 2006. Further practice guidance for court based social work staff and social enquiry report authors in relation to OLRs was issued by Community Justice Services Division in November 2006. (JD Circular 16/2006)

### **Sex offenders sentenced to less than 6 months custody and**

#### **Prisoners, who are not subject to statutory supervision post release, whose index offence is a non-sexual one but who have committed a previous sexual offence**

23. The following process applies to both the prisoner groups named above. The **Police** will be the responsible authority in relation to these prisoners post release. Whilst they are in custody, these prisoners will be managed via the Standard ICM process. The SPS record the offender on PR2 and will inform the police of the release date of the prisoner under the requirements of the Sexual Offences Act 2003. SPS will inform the police at the earliest possible date after conviction and no later than four weeks before the prisoner's actual liberation date. Confirmed Stage 1 notification should be sent to the MAPPA co-ordinator, alongside all the relevant documentation, as soon as possible after sentencing. SPS will also notify the social work unit in the prison where the offender is being held. This is important because it allows prison based social work the opportunity to liaise with local authority colleagues and other agencies whose involvement may be required. Moreover, prison based social work may have duties to perform in respect of child protection, for example in cases where the person has committed a Schedule 1 offence. It is recognised that there is no formal ICM case conference requirement for this group and that timescales for intervention are particularly tight in relation to those serving sentences of less than 6 months. However, as a matter of **best practice**, SPS staff and prison based social work - in consultation with community based social work colleagues, the Police, Sex Offender Liaison Officers (for housing matters) and other relevant service providers – should identify the prisoner's needs and will wish to consider convening a pre-release meeting, where timescales and circumstances allow. An example which illustrates this point is where the prisoner has accommodation difficulties. It is imperative that such issues are dealt with speedily and in a multi-agency manner in order to promote resettlement and public protection. It should also be remembered that although post release supervision is not in place for these groups of prisoners, they would be considered a priority for voluntary throughcare services.

### **Violent offenders not subject to supervision on release**

24. By virtue of their sentence these prisoners do not automatically fall within MAPPA. It is assumed that in the majority of cases the court will have imposed the sentence according to the information available to it at the time which will include the risk of harm posed by the prisoner. However, if during the SPS assessment process for HDC it becomes apparent that the offender is not eligible for HDC and it is considered that he is likely to pose a risk of serious harm on release, the case should be referred to the SPS Risk Management Group who will consider if the prisoners should be referred for consideration to the MAPPA under Category 3 (persons who by virtue of their conviction pose a risk of serious harm).

## Release of prisoners

25. Where offenders who are likely to fall into the MAPPA notification or referral arrangements have the potential to be released on an interim basis, or are released early for other reasons, the prison must ensure that the other responsible authorities, in particular the police, the designated supervising officer and other agencies involved are notified as far in advance as possible of the arrangements for release and return to the prison (where applicable). The process outlined above (for those prisoners subject to statutory supervision) stresses the importance of this and builds in *advance* and *confirmed* notifications. This should minimise the likelihood of offenders “slipping through the net”.

## Temporary Release from Custody (Home Leave)

26. **Temporary Release** is the generic name for any period of agreed leave (for the prisoner) from prison during their sentence. Temporary leave can be broken down into two basic types: escorted and unescorted leave. **Escorted** leave means that the prisoner is accompanied by prison based staff to the leave address (and back) for the duration of the visit. **Unescorted** leave means that the prisoner travels independently to the leave address and back. In most cases, prisoners tend to progress through periods of escorted leave to unescorted leave, though there are exceptions to this rule.

27. Temporary release presently comes in many forms; home leave being one such type. The Prisons and Young Offenders Institution (Scotland) Rules 2006 define the specific rules for the various types of leave, with the SPS describing certain criteria<sup>2</sup>.

28. As prisoners progress through the prison system they become eligible for temporary release. Unescorted home leave may be available for periods of up to 7 nights. The decision to release prisoners is ultimately one for the SPS, though this decision is normally taken after consultation with other criminal justice agencies and a full consideration of all the available information.

29. It should be noted that there is no MAPPA function or involvement in the SPS Temporary Release from Custody process. In cases where a MAPPA offender is being considered for temporary release it is imperative that there is good communication and information sharing between the SPS and the other responsible authorities, building on the strengths of the Integrated Case Management process. **JD Circular 01/2007** provides details of the roles and responsibilities and process to be followed in relation to home leave. Police and local authority social work services will have particular functions to perform (individually and collectively) around risk assessment and risk management. This ensures that robust safeguards and supports are in place to protect the public **before** the decision is taken by SPS to grant temporary release. Where registered sex offenders are being released the police and social work must be notified prior to release – every Police Force has a Registrar to whom the information should be sent. It is also important to stress that where the

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<sup>2</sup> The Prisons and Young Offenders Institution (Scotland) Rules 2006 <http://www.uk-legislation.hms.gov.uk/legislation/scotland/ssi2006/20060094.htm>.

offender has committed an offence defined in Schedule 1 of the Criminal Procedure (Scotland) Act 1995, the child protection procedures for notifying the relevant local authority/authorities must be followed. These procedures are detailed in the **JD Circular 18/2003**. Any last minute changes to the intended release address or other arrangements must be notified to the police and social work as a matter of urgency.

### **Interim liberation pending appeal**

30. It is not possible to predict that a prisoner will be granted interim liberation pending appeal however, in instances where this occurs, the prison service should notify the police and criminal justice social work of the release of the prisoner and the latest known address.

31. Where a prisoner has applied for an appeal but is not released the police and, where relevant, criminal justice social work should be advised that:

- Leave has been granted to appeal; and
- The appeal date.

### **Last minute changes to arrangements for release**

32. No matter how carefully organised, plans for the release and management of offenders can be compromised at the last minute by changes to release time, travel plans or address arrangements. Wherever possible such changes should be avoided. However in such circumstances it is crucial that consultation is undertaken by the prison with the police, local authority social work (including emergency duty teams where appropriate) and other relevant agencies involved, wherever possible in advance of release. If this is not possible the police and local authority social work should be informed as a matter of urgency.

## PART 3

### Levels at which risk is assessed and managed

1. Part 2 of this guidance explained the process by which the responsible authorities as individual agencies assess the risk posed by sex and violent offenders defined in categories 1 and 2 whilst in prison or the community. All offenders in categories 1 and 2 should be subject of a risk assessment and management plan whilst subject to a community disposal or prepared in preparation for supervision on release. The risk assessment and the components of the risk management plan will inform the responsible authorities of the level at which risk is assessed and should be managed.

2. This part of the guidance (Part 3) provides the framework under which the Multi Agency Public Protection Arrangements (MAPPA) operate, identifying three separate but connected levels at which risk is assessed and managed. This structure of risk management is intended to enable resources to be deployed so that identified risk can be managed in the most efficient and effective manner. The levels are:

- Level 1: ordinary risk management;
- Level 2: local inter-agency risk management;
- Level 3: MAPPP – Multi-Agency Public Protection Panels.

3. The risk management structure is based on the principle that cases should be managed at the lowest level consistent with providing a defensible risk management plan. The level at which a case is managed is therefore dependent upon the nature of the risk and how it can be managed – thus not all high risk cases will need to be managed by the Multi Agency Public Protection Panel (MAPPP) and equally the complexities of managing a medium risk case might justify a MAPPP referral. Defensible decision making is defined by Kemshall<sup>3</sup> It is therefore imperative that practitioners make defensible decisions in all cases. In practice this means **to make a defensible decision practitioners must:**

- Ensure decisions are grounded in the evidence.
- Use reliable risk assessment tools.
- Collect, verify and thoroughly evaluate information.
- Record and account for your decision making.
- Communicate with relevant others, seek information you do not have.
- Stay within agency policies and procedures.
- Take all reasonable steps.
- Match risk management interventions to risk factors.
- Maintain contact with offender at a level commensurate with the level of risk of harm.
- Respond to escalating risk, deteriorating behaviour, and non-compliance.

This will ensure that decisions can be evidenced and defended, if necessary.

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<sup>3</sup> Home Office Development and Practice Report 45: Strengthening Multi Agency Public Protection Arrangements( Hazel Kemshall)

4. The adoption of the three levels ensures a **consistent approach to the arrangements throughout the country**. It is intended that areas will have discretion in deciding which cases to refer to which level based on risk of harm, experience and expertise of the agencies involved but **every area must establish arrangements based on the three levels**.

#### **Level 1: ordinary risk management**

5. The largest proportion of all MAPPA offenders are likely to be managed at Level 1.

6. Level 1 risk management is the level used in cases where the risks posed by the offender can be managed by one agency without actively or significantly involving other agencies (as was the case prior to the introduction of sections 10 and 11 of the MoO Act 2005). Level 1 can only be used for Category 1 offenders (registered sex offenders) or Category 2 offenders (violent offenders) because, by definition, Category 3 offenders present a risk of serious harm, which requires active, inter-agency management. Level 1 management will primarily involve criminal justice social work, the police, or the Scottish Prison Service as the lead agency. As happened pre sections 10 and 11 of the 2005 Act, there is a requirement that the lead agency will work where appropriate with other agencies. However, it is not expected that the arrangements required under the MAPPA for higher risk offenders at levels 2 and 3 will be required to manage level 1 offenders.

#### **Level 2: local inter-agency risk management**

7. Level 2 risk management should be used where the active involvement of more than one agency is required but where either the level of risk or the complexity of managing the risk is not so great as to require referral to the Level 3. The Level 3 - MAPPP cases - may be referred to Level 2 when for example, the seriousness of risk has diminished or where the complexities of the multi-agency management of the risks have been brokered and firmly established by the MAPPP. This illustrates that just as risk can and will change, so the means of managing risk can and will change. The MAPPA provides the framework within which such changes, particularly when they concern the serious risks offenders can present, can be effectively and consistently managed. Again the important point which needs to be stressed is that cases should be managed at the appropriate level, determined by defensible decision-making, so that resources can be targeted in the most effective manner.

8. The arrangements for level 2 will encompass the police and local authority areas within the Community Justice Authority and the operation of the MAPPA will be organised on behalf of the responsible authorities by the MAPPA co-ordinator.

9. The essential feature of Level 2 arrangements is that permanent membership of the MAPPA should comprise those local agencies which have an active role to play in risk management. In addition, other agencies which may be involved less frequently, can be engaged on an ad hoc basis.

10. The Responsible Authorities will be responsible for convening and supporting the Level 2 arrangements. Good practice suggests that, depending upon the needs of the case, the following agencies can routinely play an active role in Level 2 management:

- other social work services;
- children and families or youth justice teams;



- the relevant health authority, including the mental health trusts;
- housing authorities/housing providers; and
- other duty to co-operate agencies e.g. voluntary sector providers

11. **Level 2 arrangements** are more than ad hoc groups, which change with each case. A **permanent representation from the agencies**, supplemented by representatives from other organisations as needed, will help ensure robust risk management.

12. Local inter-agency risk management may have a significant caseload of offenders that will require active management and review by the Responsible Authorities. To achieve this the Responsible Authorities must ensure that the meetings are effectively managed and supported. The Responsible Authorities are charged with the statutory function for ensuring the efficient and effective operation of MAPPA and for this reason it is important that the MAPPA meetings are chaired **by a representative of either police or local authority social work**. That person must be somebody of sufficient standing and expertise to command respect and support of partner agencies, and who has a firm grasp of local operational issues. It is recommended that this is at least service manager level or police Inspector level.

13. The frequency of these meetings is a matter for the Responsible Authority to decide, in conjunction with partner agencies and will reflect the number of cases being managed and their complexity. However setting regular monthly or fortnightly meetings will allow the opportunity for the systematic review of risk management plans.

### **Level 3: MAPPP - Multi Agency Public Protection Panel.**

14. The MAPPP is responsible for the management of offenders falling into the level 3 category. It is suggested that each CJA area should identify at least one level 3 Chair for the MAPPP. It is recommended that this is at least a senior manager from Social Work or substantive police Superintendent. The MAPPP members must be in a position to understand the requirements and commit resources to the management of level 3 offenders.

15. The criteria for referring a case to the MAPPP are defined as those in which the offender:

- is assessed as being a **high or very high risk** of serious harm;
- presents risks that can only be managed by a plan which requires close cooperation at a **senior level**. This would be due to the complexity of the case and/or because of the unusual resource commitments required;

**OR**

Although not assessed as a **high or very high risk**, the case is exceptional because the likelihood of media scrutiny and/or public interest in the management of the case is very high and there is a need to ensure that public confidence in the criminal justice system is sustained.

16. Thus although the offenders under level 3 are not exclusively those assessed as **high or very high risk**, in almost all cases they will be.

17. While most will be offenders being released from prison or already being managed in the community, they may also include:

- an offender on discharge from detention under a hospital order (with the health authority as the Responsible Authority);
- an offender returning from overseas (whether immediately following their release from custody or not); and, conceivably
- an offender who having been managed as a medium or even a low risk in the community through referral to the second or third level MAPPA meeting, comes to present a high or very high risk as the result of a significant change of circumstances.

18. Key to the effectiveness of Level 2 and Level 3 (MAPPP) arrangements is the multi-agency representation and involvement. In determining the level of the representation and the nature of that involvement three factors must be considered.

- First, the representatives must have the authority to make decisions committing their agency's involvement and resources. If decisions are deferred then the effectiveness of the multi-agency operation is weakened. Therefore it is essential to secure the correct level of seniority of attendees at meetings.
- Secondly, they require relevant experience of risk/needs assessment and management and the analytical and team-playing skills to inform deliberations. This experience and these skills can usefully contribute both to specific case management and more broadly in providing advice on case management.
- Thirdly, the effectiveness of Level 2 and Level 3 arrangements depend in large part upon establishing continuity. Multi-agency work is often complex and benefits greatly from the continuity of personnel and their professional engagement.

19. Distinguishing representation at Level 2 and on the MAPPP (Level 3) will be determined by the nature of the 'critical few' which will require senior representatives of the agencies involved.

## **OPERATION OF THE JOINT ARRANGEMENTS**

20. All agencies should be represented by senior personnel who understand the strategies for minimising the risk of serious harm and have the authority to implement appropriate strategies agreed by the MAPPA, on behalf of their agency. This is important because decisions may need to be taken at short-notice. In addition, there is likely to be a considerably higher media profile to be addressed.

## PART 4

### SECTION 1 - THE MAPPA IN OPERATION

1. The fundamental purpose of MAPPA is public safety, the protection of victims and the reduction of serious harm. Like other effective multi-agency processes, the MAPPA offers the potential for a co-ordinated approach to the management of sexual and violent offenders in the community who pose a risk of serious harm to others. It must be noted however that agencies still retain responsibility for discharge of their own statutory function. *The National Objectives and Standards for Social Work Services in the Criminal Justice System* (NOS) set the minimum standards which local authorities are required to meet in respect of these services. Police functions and duties are also clearly defined and it is important that there should be no blurring of statutory roles. For example, the guidance advocates the discussion and recording of decisions on third party disclosure in the MAPPA however, the final decision to disclose remains a decision for the Chief Constable. Rooted in the Human Rights Act principles of necessity and proportionality, MAPPA acknowledges the complex nature of much serious re-offending behaviour which often prevents any single agency from being able to deliver an effective risk management plan alone. Rather MAPPA recognizes that a coordinated risk management plan combining representatives of the Responsible Authorities and the duty to co-operate agencies offers the best chance of achieving public safety.

2. MAPPA are founded on the basis of targeting resources where they are most required. This section identifies three key stages of MAPPA notification and referral and the arrangements, which underpin them. But it should be borne in mind that following notification to the MAPPA, onward referral of prisoners/offenders to level 2 or level 3 (MAPPP) must be on the basis of the assessment of the **risk of serious harm** posed by that individual.

3. Research on MAPPA arrangements in England and Wales<sup>4</sup> concluded that the successful operation of the MAPPA is largely due to the co-ordination of its management centrally by a co-ordinator and administrative support. It is the intention that each CJA area has a coordinator appointed to this role, that is a senior practitioner with experience from a responsible authority/ agency. Further information on the role and responsibility of the co-ordinator is provided at Part 5.

4. The research also suggests that the co-location of police, social work units and the MAPPA coordinator is beneficial in promoting joint working, sharing best practice and experience in the assessment and monitoring of sex and violent offenders. The co-location of police and criminal justice social work is a matter for those agencies to decide. There are other models in operation however and examples are given in Annex B.

5. Part 2 of this guidance provides the process or path followed by an offender in categories 1-3 once they have been sentenced. As previously mentioned all offenders within these categories should be notified to the MAPPA to allow an accurate picture to be held of those being managed at whatever level.

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<sup>4</sup> Home Office Development and Practice Report by Hazel Kemshall, Gill Mackenzie, Jason Wood, Roy Bailey and Joe Yates De Montfort University Leicester.

## SECTION 2 - PROCESS

6. This section describes the process which takes an offender into MAPPA notification and, if necessary, referral onward into the level 2 and level 3 (MAPPP) arrangements. It also takes into account the Integrated Case Management system developed by SPS and local authorities on the supervision of prisoners.

### KEY STAGES OF MAPPA

7. There are **three** key stages:

- **Stage 1 (MAPPA nominal) Identification** of an offender falling within the MAPPA category of offence and **notification** to the MAPPA Coordinator. Notification is generally the responsibility of criminal justice social work services, the police or the Scottish Prison Service.
- **Stage 2 (MAPPA referral)** Referral of an offender to Level 2 or Level 3 (MAPPP) multi agency risk management is on the basis that the risk posed of serious harm requires management through a multi-agency risk management plan. Stage 2 referrals are made by SPS, police and criminal justice social work primarily in respect of Category 1 and Category 2 offenders, but can be made by any agency (Responsible Authority and Duty to Co-operate) for Category 3 offenders.
- **Stage 3 (MAPPA deregistration)** Exit of an offender from MAPPA. The exit of an offender from MAPPA is determined by the length of sex offender registration or licence supervision (for Category 1 & 2 offenders) which ever is the longer, or when the offender is no longer considered to pose a risk of serious harm by the Responsible Authority (for Category 3 offenders).

#### Stage 1 (MAPPA nominal) - Notification to MAPPA Coordinator

8. MAPPA entry is identified by one of the three categories of offender defined in section 10 of the Management of Offenders etc (Scotland) Act 2005. The Responsible Authority must be clear as to which offenders fall within the remit of the MAPPA at any particular time, regardless of the level at which their risk is managed. To ensure that this occurs, the relevant responsible authority having knowledge of a relevant offender must, make a stage 1 notification to the MAPPA Coordinator for the owning Community Justice Authority area. This means that all relevant categories will be notified to the co-ordinator for recording, ensuring that no relevant prisoner or offender is missed. It also means the MAPPA will have an accurate record of the numbers being dealt with by the responsible authorities in that area. This is important for planning and reporting purposes. The use of standard notification forms (Annex G) will ensure consistency in practice.

#### Custodial Sentences

9. The majority of Stage 1 notifications will result from a sentence of imprisonment for a sexual or violent offence. The introduction of Integrated Case Management should ensure that such offenders who will be subject to MAPPA are more readily identified at the point of sentence. Stage 1 notifications however will be made to the MAPPA coordinator at the pre

release stage rather than at point of sentence. Notifying MAPPA too early in the sentence serves no purpose, given that risk can change during a lengthy prison sentence. It should also be recognised that the risk management will be different in a custodial sentence to when an offender is at liberty.

10. For those prisoners subject to sex offender notification, but not to statutory supervision by criminal justice social work in the community (i.e. those serving less than 6 month sentences), SPS, as the responsible authority for those in custody, should make a stage 1 notification to the MAPPA Coordinator at the earliest opportunity given the limited time available. They are also required to notify the police of the prisoner's impending release. For those prisoners subject to statutory supervision on release by criminal justice social work in the community, SPS will give an *advance* stage 1 notification (and stage 2 referral where appropriate) to the MAPPA coordinator. This will be done after the annual ICM case conference preceding the prisoner's Parole Qualifying Date. A *confirmed* notification/referral will be sent to the coordinator once the parole decision has been made. For those who are not granted parole, SPS will send the coordinator a confirmed notification/referral at the point where the pre-release planning begins, that is approximately 3 months prior to the prisoner's earliest date of liberation (EDL).

### **Community Sentences**

11. For those subject to a community sentence, Stage 1 notification should be made by Criminal Justice Social Work to the MAPPA Coordinator for low or moderate risk offenders (level 1) **not later than 3 working days** of the receipt of the community disposal or order for sex offenders and for violent offenders subject to a probation order. Notifications and referrals for those who are deemed to fall into level 2 or 3 should be notified as a matter of urgency to allow arrangements to be made for MAPPA involvement.

12. The MAPPA coordinator for the area of the Community Justice Authority will be the single point of contact for all stage 1 notifications.

13. Stage 1 notifications will not generally be shared by the MAPPA with other agencies as these will fall to be managed by the responsible authority but if the offender remains at level 1 (Ordinary Risk Management) the responsible authority may still engage and share relevant information with individual agencies to be involved in the assessment and management of risk of the offender e.g. an offender may be level 1 but has an employment or accommodation requirement to be resolved. This would not warrant a referral to MAPPA level 2 or 3 but still require interagency work.

### **Actions following stage 1 notification**

14. Those offenders being notified under the Stage 1 notification requirements are already being managed by one of the responsible authorities.

15. Following notification, or at the time of notification to the MAPPA co-ordinator, the managing responsible authority must decide whether the offender poses a serious risk of harm to the community and whether a multi agency risk management plan is required.

## **Stage 2 (MAPPA Referral) Referral to multi agency risk management- Level 2 or Level 3 (MAPPP)**

### **Community Sentences**

16. In each instance referral to MAPPA levels 2 or 3 must be informed by the current risk assessment and the proposed management plan. A standard referral form is at Annex G.

17. For appropriate new community sentences Stage 2 referrals (levels 2 or 3) must be made to the MAPPA Coordinator within a period of **5 working days** of stage 1 notification. If no stage 2 referral is received no further action will be taken by the co-ordinator, therefore the responsible authority must ensure that it is managing risk of harm by ordinary risk management mechanisms i.e. at level 1. It should be noted that those Category 1 offenders who are subject to both a registration requirement and supervision on licence on release do not necessarily require management at Level 2 (MAPPA), although good practice would expect police and criminal justice social work to coordinate their respective tasks.

18. Multi agency risk management is an expensive resource and should only be used where it is necessary to manage the risk of serious harm in a collaborative and co-ordinated manner. Therefore a decision to refer an offender into the level 2 or level 3 (MAPPP) must be on the basis that the offender poses a high or very high risk of serious harm to others or where a multi agency response is required to assess or manage the risk. For those offenders subject to a community disposal or under supervision in the community a stage 2 referral may be made either by the police or criminal justice social work at one of the two following points:

- at the time of the first risk assessment and development of the management plan; or
- at any point during the period of the order, supervision or registration where the level of risk appears to be rising.

The converse of this would be that failure to refer to a MAPPA and convene a level 2 meeting would be held to be indefensible on the basis of the risk assessment and other relevant information currently available.

### **Stage 2 referrals from custody.**

19. For those prisoners who fall within the relevant categories, the decision to refer will be made during the Integrated Case Management (ICM) process. The timing of this referral is dependent on whether the offender is being released on Parole or at his/her Earliest Date of Liberation (the flowcharts in Part 2 provide further information on this). ICM is a joint process involving the Scottish Prison Service, and criminal justice social work during sentence. The decision to refer to the MAPPA at level 2 or 3 will be discussed and agreed in the ICM case conference as part of the risk assessment and risk management process which will also involve police and, where appropriate, other agencies. Where the responsible authorities cannot agree on the referral, the case should be reviewed by a senior manager of the responsible authority who will have responsibility for the offender's case post release. It is important to stress that the ICM process provides the proper forum for discussion of the offender's case and referral to the MAPPA. The responsible authorities represented at the ICM case conference should seek to avoid disagreements, which lead to the review by a senior manager. On receipt of the referral the MAPPA coordinator will decide if the offender

meets the criteria for inclusion in the level 2 or level 3 (MAPPP) based on the information supplied. In the absence of the co-ordinator e.g. on annual leave, the responsible authorities must ensure that there are mechanisms in place for such decisions to be taken at an appropriate senior level to avoid delay.

20. In exceptional circumstances offenders posing lower risk of harm may be appropriately referred to Level 2 risk meetings if there are aspects of the case that require multi-agency collaboration (e.g. local notoriety/ threats to the offender/complexity of child care/vulnerable adults).

21. Stage 2 referrals will be made by SPS, the police and criminal justice social work in respect of category 1 and category 2 offenders but referrals can also be made at stage 2 by “duty to co-operate” agencies for category 3 offenders (persons who by nature of their conviction are considered to pose a risk of serious harm). Contact should be made in the first instance with the police and, where relevant, criminal justice social work. As required by legislation the decision on whether the referral falls within the remit lies with the responsible authorities in the MAPPA.

22. The MAPPA Coordinator is able to challenge referral decisions if it is considered that the above criteria have not been met. For stage 2 referrals from “duty to cooperate” agencies the MAPPA coordinator will exercise professional judgement on behalf of the responsible authorities, as to the appropriateness of the referral, in terms of the offender falling within the remit of MAPPA and as to whether the level of the risk of serious harm is sufficient to require multi agency risk management. Where this cannot be resolved the final decision should be made by the Chair of the MAPPP.

23. A model template for stage 2 referral to the MAPPA Coordinator is at **Annex G**.

- The responsible authority will complete the referral form giving all relevant information regarding the likelihood of reoffending, the risk of serious harm and any indication of imminence. Any formal risk assessment undertaken should be noted.
- The responsible authority should identify factors known to contribute to the risk of serious harm and that require management through a multi-agency public protection process including key characteristics of the offender and any local knowledge about the offender based on evidential information.
- The responsible authority should identify any core agency or agencies central to the delivery of an effective risk management plan and any other known agency currently involved in management or care of the offender.
- The responsible authority should also comment on previous responses to supervision and any previous convictions noted by the police.

If the referral is accepted, the co-ordinator will confirm this to the responsible authority and arrangements will be made by the co-ordinator to progress the case to the initial Level 2 meeting /Level 3 MAPPP. **It will be important for the representative attending the MAPPA/MAPPP meetings to present the risk assessment to be someone who has been involved in and trained in the risk assessment process with the necessary understanding to be able to link it to the risk management plan.**

### **Level 3: MAPPP - Multi Agency Public Protection Panel**

24. The MAPPP is responsible for the management of the ‘**critical few**’. The criteria for referring a case to the MAPPP are defined as those in which the offender:

- (i) is assessed as being a **high or very high risk** of causing serious harm; AND
- (ii) Presents risks that can only be managed by a plan which requires close co-operation at a senior level due to the complexity of the case and/or because of the unusual resource commitments it requires; OR
- (iii) Although not assessed as a high or very high risk, the case is exceptional because the likelihood of media scrutiny and/or public interest in the management of the case is very high and there is a need to ensure that public confidence in the criminal justice system is sustained.

25. The referral to Level 3 (MAPPP) must identify those aspects of the risk management plan that require the multi agency collaboration and which cannot be effectively delivered at the Level 2 risk meeting. Membership of the MAPPP must be at a senior level in the Responsible Authorities and the agencies represented. The Chair should be at senior manager level for Criminal Justice social work or at Substantive Superintendent level for the police. Both the Chair and the membership must be able to take decisions and allocate resources for the management of the offender.

### **Stage 2: Pre meeting Information sharing**

**Section 2 provides the framework for a consistent approach to the arrangements for MAPPA notification and referral. Critical to this is the exchange and sharing of relevant information.**

26. Prior to Level 2 meetings or Level 3 (MAPPPs) it will be essential for agencies to share information held about the offender. Formalised pre-meeting information sharing ensures:

- all responsible authorities and duty to co-operate agencies are aware of the referral
- all agencies have an opportunity to identify and share relevant information held by them.
- all agencies have the opportunity to identify if they consider themselves to be a core agency to the risk management plan; and
- the amount of time spent exchanging information at Level 2/Level 3 (MAPPP) meetings decreases so that the focus is on issues of risk assessment and risk management.
- clarification of the threshold for Level 3 (MAPPP).

27. An initial Level 2 meeting must occur **within 20 working days of referral** and an initial level 3 meeting must occur **within 5 working days of referral**.



28. The information included by the managing agency in the Stage 2 referral will be passed to all members of the Responsible Authorities and Duty to Co-operate agencies directly by the MAPPA Co-ordinator. This is likely to require the receiving agencies to have a single point of contact (SPOC) through whom this information can be securely passed.

29. At point of information exchange the receiving agency will be requested to search agency records for any relevant information on this offender or potential victims. The search and response should be completed as a matter of priority and no later than within **5 working days** and forwarded to either the managing agency or the MAPPA coordinator (as directed) in the following terms:

- If nothing found – no trace/negative reply
- If material found but not relevant – positive trace/negative reply
- If material found and relevant – positive trace/positive reply and share the relevant information with either the managing agency or the MAPPA co-ordinator (as directed) for the sole purpose of public protection and reducing the likelihood of reoffending.
- If material found and relevance not clear – positive trace/further consideration required.

30. The response should also indicate whether the agency considers itself to be **core** to the risk assessment and management process under MAPPA and confirmation that it will attend the initial Level 2/ Level 3 (MAPPP) meeting.

31. The Responsible Authorities must agree with Duty to Cooperate agencies, and set out in the memorandum of understanding, the agreed method of communication between the MAPPA Co-ordinator and the single points of contact.

### **Stage 2- Initial level 2 and level 3 (MAPPP) meetings**

32. The product of pre meeting information exchange should be available for all agencies attending initial level 2 and level 3 meetings. The purpose of the meeting is to:

- bring additional information or assist agencies to assess relevance of existing information;
- note the outcome of risk assessment tools in terms of likelihood of re-offending, risk of serious harm and imminence and agree aspects of behaviour/circumstances critical to delivering an effective risk management plan;
- consider a risk management plan that addresses these critical factors **including any resource issues for agencies**. The plan should be specific, measurable, achievable, realistic and timed (SMART Criteria). It must also clearly identify ownership. (A risk management plan is likely to have been prepared as part of the ICM pre-release planning process.)
- Set a formal review date for plan; and
- Consider whether any element of risk which cannot be managed at level 2 for escalation to level 3.

33. Where the multi agency aspect of the risk management plan has been delivered and risk of serious harm has reduced, consideration must be given to referring the case back to Level 1 (appropriate for Category 1 and Category 2 Offenders) or out of MAPPA.

### **Organising appropriate attendance at level 2 and level 3 (MAPPP)**

34. Multi agency risk management is an expensive resource and should only be used where it is necessary to manage the risk of serious harm in a collaborative and co-ordinated manner. Therefore in making arrangements for the meetings it will be necessary for the MAPPA Coordinator, in conjunction with the managing responsible authority, to identify which agencies are central (core) to the delivery of the risk management plan and should therefore attend. As well as senior representatives from the responsible authorities, supervising social workers and police officers should attend. Involvement of agencies when they have no information or advice to offer and no provision of services to the offender wastes their time and may undermine their involvement in other relevant cases. The MAPPA coordinator can maximise agency involvement by organised scheduling of meetings. All agencies should be represented by senior personnel who understand the strategies for minimising or reducing risk of serious harm and have the authority to implement appropriate strategies agreed by the MAPPA or MAPPP meetings on behalf of their agency. Responsible Authorities also need to ensure that agencies involved are party to the Memorandum of Understanding and relevant information sharing protocols.

35. Arrangements for, records of meetings and action points must follow a consistent approach. The MAPPA coordinator is responsible for ensuring the planning, co-ordination, recording, review and follow up within specific timescales and to set criteria. The Chair should ensure that meetings are focused on systematic assessments based on risk factors. The Chair should make a clear summary and provide active steers as to what actions and resources are required to appropriately manage the case.

36. A Review meeting should also be convened in order to review the risk management plan. All agencies have a responsibility to report to the MAPPA Co-ordinator any information that indicates a change in risk whenever that might occur.

### **MAPPA minutes**

37. The MAPPA are designed to provide a consistent approach to management of risk of serious harm posed and contribute to improved public protection. It is important that an accurate record of the salient features of the discussions and of the decisions reached at MAPPA meetings is made and kept. These records will form part of the basis of defensible decision-making. It is advisable for minutes to make clear:

- that they are a record of a meeting held under the auspices of the MAPPA and therefore that those attending understand the basis upon which the meeting is held – including the confidential nature of the proceedings and the minutes;
- who attends the meeting and in what capacity;
- the identity of the offender – it is good practice to record the deliberations on each offender separately – and whether the meeting is the initial, or further review of the offender;
- those issues which are relevant to the assessment and the management of risk: for each risk factor identified there should be a corresponding response as to how that

- factor will be managed; and,
- the actions it is decided will be taken as a consequence of the discussion, who will take them, in what timescale and how these actions are intended to reduce/manage the risk.

38. Action Points from the meeting will be reflected in a focussed and clear risk management plan. It is crucial that where there are changes proposed to the plan which require an alteration to existing licence conditions that a report is submitted by the supervising officer to the Parole and Life Sentence Review Division of the Criminal Justice Directorate for consideration. This should not be submitted directly to the Parole Board. The MAPPA **cannot** change licence conditions.

39. The minutes of the meeting should be treated as confidential. The minutes should be given only to those attending the meeting and should be seen only by those persons and those who have the authority and duty to consider what was discussed and decided. The minutes should therefore be kept safely and securely so that their confidence is preserved. The principles of the Government Protective Marking system will apply. Although not every meeting will necessarily deal with the most sensitive issues, many will and inadvertent disclosure can cause very serious consequences. It is important therefore for those duty to co-operate agencies and their representatives who may be unfamiliar and less confident about handling information of the sort which engagement with the MAPPA entails, may need clear and detailed advice about how minutes should be treated.

40. The MAPPA will be an effective means of engaging the involvement of different agencies. Part of its effectiveness depends on the strict observance of the confidentiality of the minutes of what are often sensitive MAPPA meetings. The following clarifies the general position and the approach to be adopted when disclosure of minutes to those not party to the meeting is made.

41. MAPPA minutes are records made and kept for a specific purpose. They should not be used for any other purpose unless there is a clear and compelling reason to do so, which does not compromise the integrity of professional practice and the law. The minutes may well contain personal information about third parties as well as offenders – including information about members of staff of the agencies involved. There is a requirement for that information to be kept confidential and not to be disclosed to third parties. The minutes also record the activities of co-operation the duty to co-operate involves, and/or the agreement to collaborate in those activities. There should rarely be a need to disclose minutes in their entirety to anyone not party to the meeting.

42. MAPPA minutes must be treated by the duty to cooperate agencies receiving them as ‘third party information’. The Data Protection Act also provides that a person to whom personal information relates has a right to disclosure of that information, subject to various exemptions and exceptions.

43. Requests for disclosure of MAPPP minutes by an offender or their legal representative should be treated as a Subject Access Request (SAR) authorised under the Data Protection Act. The coordinator and the chair of the meeting will consult with the other agencies which attended the meeting and consider whether the information can be withheld on the grounds provided by one of the exemptions and/or exceptions to the Data Protection Act. Where there

is a lack of clarity about how to proceed, the lead Responsible Authority should seek advice from their Information Security Officer/ Data Protection Officer.

## **ViSOR**

44. ViSOR (Violent Offender and Sex Offender Register) is an IT database to facilitate multi-agency information sharing in relation to Registered Sex Offenders, Non Registered Sex Offenders, Violent Offenders, Dangerous Offenders and Potentially Dangerous Persons.

45. An offender (the nominal) included on ViSOR will have either a criminal conviction for a relevant offence or will be considered to present a level of risk or concern which requires ongoing assessment and management.

46. At present those records held on ViSOR relate to Registered Sex Offenders and those non registered Offenders whose current behaviour is of concern. There are at present approximately 3,800 ViSOR nominals managed in Scotland and a total of approximately 60,000 throughout the UK.

47. ViSOR provides agencies with a confidential communication tool through which they are able to exchange information in joint offender management. It has the capacity as the IT solution for agencies to record their assessment, monitoring and review of offenders managed in the Multi Agency Public Protection Arrangements and facilitates the storage of minutes of meetings and offender management plans.

48. The use of ViSOR is intrinsic to the development of enhanced protocols between Responsible Authorities and between relevant responsible individuals with the capacity to enhance these protocols, speed up communication, and support consistency and sustainability. The national network of multi-agency ViSOR User Groups has a central role in informing the development of User standards, protocols & conventions.

49. Within each ViSOR record, there are individual users from the relevant agencies with a responsibility for the day to day implementation of the management plan for that offender. All users are required to keep their contact details on ViSOR fully up to date to ensure that queries regarding any offender can be directed quickly and accurately to the most relevant personnel.

50. ViSOR is primarily a Management and Assessment tool. It has the facility to record and store current and historical risk assessments including the Risk Matrix 2000 (RM2k) which is the current accredited assessment model which has been adopted nationally. While RM2k is a static tool, ViSOR maintains a capability to acknowledge dynamic factors when managing risk. It also has the capacity to incorporate an agreed and accredited dynamic assessment tool. The assessments are linked to Risk Management Plans where actions are recorded.

51. There is a clear process for risk management action planning and for identifying each organisation's responsibilities within that plan. There is clear delineation and delegation of roles and responsibilities within the ViSOR application. Responsibilities for designated tasks are allocated to the individuals actively involved in the management and supervision of the offender.

52. Each offender record contains a diary page. Herein are recorded any appropriate dates/events relating to the offender concerned. These would include Registration dates, home visits, case conferences and supervision appointments. These events are allocated to populate the diaries of the relevant ViSOR users within the responsible agencies.

53. The system has two separate retrieval facilities. The 'Find' page permits the user to search on the basis of known nominal details. The 'Search' page is for enquiries of a speculative nature. Descriptive information, including photographs, is held on ViSOR. This allows searches to be carried out based on descriptive factors.

54. Where a record exists on ViSOR and that individual ceases to be actively monitored on a statutory basis, then the record will be held in an archive within ViSOR but will remain subject to retrieval where necessary for any historical investigation.

55. Agencies are provided with documentation and guidance which describe the requirements for the implementation of ViSOR.

### **Stage 3 Exit from MAPP A**

56. It is recognised that the registration period has no bearing on the risk presented. However the exit of an offender from MAPP A is nevertheless determined by the length of sex offender registration or licence supervision (for Category 1 & 2 offenders) which ever is the longer, or when the offender is no longer considered to pose a risk of serious harm by the Responsible Authorities (for Category 3 offenders). The MAPP A Coordinator must be notified when an offender exits the MAPP A to ensure that records are updated accordingly and responsible authorities are clear as to which offenders fall within the remit of the MAPP A at any particular time.

57. A small proportion of Category 1 and 2 offenders may still pose a high risk of serious harm to the public at the point they would normally leave the joint public protection arrangements i.e. at the end of sex offender registration or the end of statutory supervision, whichever is the longer. It is NOT possible to extend their inclusion within Category 1 or Category 2. However it is possible for the Responsible Authorities to consider their inclusion under Category 3, for other offenders. It will be necessary to set a review date for determining whether continued inclusion in the joint public protection arrangements is justified. The review date may be extended or shortened as a direct result of risk assessment and management action.

## PART 5

### MAPPA Co-ordination

1. Research undertaken in England and Wales highlighted the importance of good co-ordination between agencies and recommended that the arrangements for joint working should be supported by the development of a **co-ordination/ management function**. This allows the arrangements to be co-ordinated from a central point (in the community justice authority) ensuring a single point of contact and advice on MAPPA arrangements and a dedicated function on behalf of all the responsible authorities.

2. Systematic co-ordination of MAPPA functions will be key to the delivery of public protection. The co-ordination role will have a key role in ensuring that the **identification and information sharing** functions of the framework work effectively. A model job description and person specification is included in Annex C.

3. The main functions of the co-ordination role are designed to allow all agencies who have a statutory responsibility to do the following:

- To receive details of all offenders who pose a risk of serious harm to others and for whom a multi-agency risk management plan is necessary in order to manage that risk.
- To make referral of sexual or violent offenders whose risk of serious harm they consider needs to be managed through a multi-agency meeting at either Level 2 or Level 3 (MAPPP).
- To share information relevant to the management of serious harm with other agencies within MAPPA on the basis that the information will be held securely and used by appropriate personnel within those agencies for public protection purposes only.
- To help determine if their agency is a core partner in terms of the delivery of risk assessment and risk management plans that address the risk of serious harm.
- To receive the risk management plans and notes from all relevant Level 2 and Level 3 (MAPPP) meetings showing clearly the status of each offender, the agencies delivering components of the plan, timescales, review arrangements and the point at which the offender exits the multi-agency risk management process.
- To provide a single point of contact and advice on all aspects of MAPPA.

4. Importantly the coordinator role will be a dedicated function carried out on behalf of the Responsible Authorities, accountable to those operating the joint arrangements. It will be designed to facilitate multi-agency risk management being focused on the right people in a timely and efficient manner with the aim of delivering robust and defensible management plans that address known indicators of serious harm to others. The remit of the MAPPA Coordinator will not extend to responsibility for areas that fall within the remit and responsibility of the individual agencies.

5. The role of the MAPPA Co-ordinator will include the following main responsibilities:

- Provide a central point of reference for responsible authorities and agencies in relation to the management of risk posed by potentially dangerous offenders
- Receive notifications and referrals to MAPPA

- Act as gatekeeper - ensuring that appropriate referrals are made at the correct level of risk
- Negotiate with senior managers in the responsible authorities, primarily police, social work and prison service as to the appropriateness of referrals and challenge referral decisions if the criteria do not appear to have been met.
- Identify which agencies are central to the delivery of the risk management plan and organise appropriate attendance at meetings.
- Require agencies to search records for relevant information and collation of the pre meeting information.
- Arrange meetings, ensuring that invitations to attend and supporting documentation are sent out on time.
- Provide quality assurance of MAPPA processes and monitor work to ensure a consistency of approach and that informed and appropriate decisions are taken
- Manage the administration support staff who will be responsible for preparation and distribution of the minutes of level 2 meetings and level 3 Multi Agency Public Protection Panels (MAPPS)
- Bring forward and schedule review meetings
- Attend level 3 MAPPP meetings
- Maintain and collate statistical information in order to inform evaluation and statistical reports.
- Draft an annual report on behalf of the responsible authorities
- Attend training courses relevant to the risk assessment and management of dangerous offenders
- Develop inter-agency liaison including in relation to the development of joint training on risk assessment and management
- Inform other areas when an offender subject to MAPPA moves into their area
- Ensure that the principles in relation to sharing information, confidentiality and disclosure are maintained as outlined in the Memorandum under the Duty to Cooperate.
- Actively market the work of Multi Agency Public Protection Arrangements
- Access and, where appropriate, input information onto ViSOR
- Undertake such other reasonable duties as may be required from time to time.

## MEETINGS

6. It is important that MAPPA meetings are well organised and that accurate records of them are made and safely kept to reflect defensible decision-making. **A standard MAPPA meeting template** is included at **Annex H**. Incorporating this within VISOR will ensure consistency of approach to this important part of MAPPA practice and increase the confidence of those attending the meetings.

7. There are three broad purposes of the MAPPP and other level meetings:

- (i) initial case consideration;
- (ii) case review; and
- (iii) consideration of case-related issues.



8. The following draft standing agenda reflects all three purposes, not all of which may be the objective of every meeting, although parts I, II, III and IV of the following paragraph are directly relevant to the initial case consideration and case review purposes.

9. The record of every meeting must clarify whether it is an **initial** or a **review** meeting.

### **Proposed Standing Agenda for MAPPA meetings:**

#### **I. Statement of confidentiality**

- To remind and reassure those attending of the sensitive nature of some of the information shared at the meetings – (reference to the Memorandum of Understanding and local protocols on information sharing may be helpful.)

#### **II. Sharing and Considering Information**

- Preparation: all the written information relevant to the purpose of the meeting should be distributed in good time before the meeting so that discussion focuses upon the actual assessment and plans to manage risk.
- Updating and clarifying: the meeting will need to ensure that the information to hand is up to date and any unclear issues or information clarified.
- Validating: identify whether all those who need to inform the discussion and decision-making are represented or have at least shared the information they have.
- Diversity issues: identify and give due consideration to diversity issues – whether, in respect of either the offender or the actual or potential victim, there are gender, age, sexuality, racial, religious, disability or any other issues which may lead to unfair and unlawful discrimination which affect the assessment AND the management of risks.

#### **III. Assessment of Risks**

- Identify the risks: their seriousness, likelihood and imminence and the relevant offending-related factors.
- Identify who is or might be at risk – it is recommended that victim issues are specifically considered and noted
- Identify the compliance and motivation of the offender and what may promote and diminish these

#### **IV. Planning Risk Management**

- As is clear, this part of the meeting falls out of parts II and III. Emphasis here is placed upon making explicit the links between the conclusions reached in parts II and III and this section. Risk management plans cannot merely be generally informed by the consideration of the information shared and the assessment of risks but, to ensure a defensibility of decision-making, must be explicitly connected to them.
- Relating risk management to risk assessment: each feature of the management plan must relate directly to the features of the risks identified in the assessment of risks. It must link agreed actions to risk and/or the factors associated with risk.
- Involving the offender: consideration can be given here to involving the offender if

considered appropriate.

- Clear definition of each agreed action: there are other means of providing this definition, S.M.A.R.T. (specific, measurable, achievable, realistic, and timed) is one.
- Accountability: the responsibility for each agreed action with the contributory roles of other individuals/agencies, must be clearly identified.
- Key contacts: this follows from the accountability principle – a single point of contact ensures that the delivery of the management plan, however many agencies it involves, is informed by new information or changes in any of the variables which affect risk and its management. In the most difficult and complex of cases, operational command procedures may replace single point of contact arrangements.
- Contingency planning – what needs to happen if risk increases or an element of the risk management plan does not happen
- Consideration as to whether the level of MAPPA should be increased or decreased.

### **Community Notification**

**The ultimate decision on whether third party disclosure in relation to registered sex offenders should take place lies with the Chief Constable. However disclosure usually does not take place without consultation between the police and other agencies responsible for the management of the offender. As the requirements to consider community notification and recording and reporting of instances of community notification increase as a result of reviews across the UK jurisdiction, the MAPPA provide a focus at case management level for agencies to actively take community notification into consideration. To ensure that this forms part of the offender management process, the MAPPA meeting should consider the following**

- **Does community notification need to take place?**

**if no, this should be recorded**  
**if yes, reason for disclosure should be recorded**  
**if yes, date at which disclosure took place**  
**if yes, to whom**

### **VI. Consideration of case-related Issues**

- It is good practice to include at every case conference/MAPPA meeting time to consider issues which may have arisen from the cases specifically considered but which have a wider significance.

### **Records of meetings**

10. These records will form the basis of much of the defensible decision-making. This does not mean however that they are openly disclosed. (See Part 4) MAPPA meetings can involve very sensitive information. Building trust between agencies, which is the basis for effective information sharing, will require confidence in the organisation and the accuracy and security of its record keeping.

11. To ensure accuracy of the records of the higher level meetings, these meetings may be tape-recorded. The tapes can be used by the person writing the minutes to clarify/confirm what was said. Tapes should NOT be kept but erased once the record has been agreed. Time spent revising the record at subsequent meetings can be avoided by ensuring that the record, which should comprise a separate minute on each case considered, is prepared and distributed in draft as quickly as possible; and recipients should be required to suggest amendments within a short period.

12. A MAPPA minute template is at Annex H. The minutes of the Level 2 and Level 3 (MAPPP) should be produced within 5 working days and sent under confidential cover to the member of the central (core) agencies through the Single Point of Contact (SPOC). They should summarise the Stage 2 referral and reference the pre-information exchange. They must show clearly how risk is assessed, the critical aspects for risk management and the risk management plan detailing specifically the actions, the person responsible for each particular action and the timescale for completion. A date for review must also be set. The agency must determine how such notes are stored securely and can be accessed in the event of an emergency or by other agency personnel having legitimate access.

13. Most agencies now work in an environment with subject access requests under data protection guidelines. It is clearly important that notes indicate explicitly what information is not to be disclosed to the offender and the reasons why such disclosure is restricted. In a small number of cases it is anticipated that disclosure of any nature would properly be resisted on the basis that it would heighten the risk of serious harm to others or self. This will also facilitate decisions at a later stage about access to notes.

14. While the offender will not be involved in the Level 2/ Level 3 (MAPPP) meetings there should be a clearly stated mechanism for consulting with the offender both before and after risk meetings. This will fall to the responsible authority i.e. the supervising officer or police officer with responsibility for the case. Engaging the offender in the reality of risk management can be productive. This reflects the critical contribution which offenders themselves can make to changing offending behaviour and for taking responsibility for their actions. Offenders must be aware that they are being managed through the MAPPA, what the MAPPA is, and what that means for them as individuals.

### **Review Meetings**

15. Review meetings will primarily be a review of the risk management plan, whether the actions have been delivered, whether any new information has been received that alters the risk assessment and whether there continues to be a need to manage the risk of serious harm in this multi-agency forum.

16. Responsible Authorities and Duty to Cooperate agencies will continue to have a responsibility to inform the MAPPA co-ordinator of any information they receive that indicates a change in the risk of serious harm posed by an offender, in either a positive or negative manner. Review meetings must be called to ensure that any change is addressed.

17. In order that the risk management process can be seen to be proportionate and fair, issues of diversity must be included in personal data recorded for offenders and victims.

## **Contingency Plans**

18. Contingency plans should be put in place for all offenders. The plans must include relevant contact points for emergency action (**including out of hours contacts**) or instructions for all agencies involved to call a MAPPPA or MAPPP meeting at short notice. Public protection is paramount and therefore agencies should not delay if they consider that any action or incident has or could lead to increased risk posed by the offender.

## Part 6

### THE DUTY TO CO-OPERATE

1. Section 10(4) of the Management of Offenders etc (Scotland) Act 2005 imposes a 'duty to co-operate' on agencies defined by Scottish Statutory Instrument. This Section of the Guidance:

- explains the purposes and principles under which the duty to cooperate should function.
- provides a suggested example of the content of the model 'Memorandum' under section 10(5) which requires the Responsible Authorities in each area to draw up with those organisations about the ways they will co-operate.
- outlines in the attached Annex the roles of those organisations on which it is imposed and the type of involvement each may have in the MAPPAs.

2. The development of the duty to cooperate and the preparation of this Section of the Guidance have helpfully been informed by the relevant agencies, government departments and interest groups.

3. The purpose of the duty to co-operate is to help strengthen the MAPPAs. The principal responsibility for protecting the public from sexual and violent offenders rests in the form of the responsible authorities. However, the effectiveness of public protection often depends on more than just a criminal justice response. It is well known that other agencies play an important role in helping offenders to resettle and avoid re-offending. For example, research has shown that offenders with jobs have one-third to one-half lower rates of re-offending than offenders without employment. Re-offending among offenders who have stable accommodation on release from custody is similarly lower. The important contribution other agencies can make is also highlighted in cases where offenders have mental health problems or where they pose a risk of harm to children.

4. While the professional 'starting points' and 'finishing points' of all the agencies involved in the MAPPAs may be different, a formal means of co-operation is required when their responsibilities and expertise cover some of the same ground. Without co-operation we get collision – agencies unintentionally frustrating or compromising, sometimes with dangerous consequences, the work of one another. Preventing that collision and enabling joint working is essentially what the MAPPAs duty to co-operate is about.

5. Enabling the co-operation of all those agencies, which work with MAPPAs offenders, is therefore vital. Placing that co-operation on a statutory basis underpins the good practice that has already developed; and locates it clearly within the framework of the MAPPAs. It will complement and reinforce existing arrangements which require multi-agency joint working. It will also ensure greater consistency across Scotland in the way agencies work together.

## What the Duty to Co-operate Means and Involves

6. The legislation does not define the activities the duty to co-operate involves. It requires that what co-operation is to mean is determined in each area through the 'memorandum' drawn up by the Responsible Authorities with the agencies upon which the duty is imposed.

7. The duty to cooperate should be imposed only in respect of the **operational, case-related functions** involved in assessing and managing the risks posed by MAPPA offenders.

8. The duty to cooperate is **reciprocal** and requires the Responsible Authorities to co-operate with the duty to cooperate agencies and those agencies to co-operate with the Responsible Authorities in assessing and managing the risks posed by MAPPA offenders. The duty to cooperate includes the sharing of information. Guidance on the sharing of information is covered in Part 7.

9. The duty to cooperate agencies should cooperate only in so far as this is compatible with their **existing statutory responsibilities**. Therefore, the duty does not require the agencies on which it is imposed to do anything other than what they are already required to do. It requires them to carry out their responsibilities, where these relate to MAPPA offenders, collaboratively with the Responsible Authorities and the other duty to co-operate agencies.

10. The duty to cooperate is imposed only on those agencies identified generically by Scottish Statutory Instrument and can only be varied by Scottish Ministers. The duty can only be extended to other agencies and it can only be removed from one of the specified agencies by amending the SSI. Therefore, the Responsible Authorities cannot decide to include other agencies within the duty to co-operate arrangements or to exclude those stipulated in the SSI. The Responsible Authorities and the duty to co-operate agencies must set out the ways in which they are to co-operate in a **memorandum** which they must draw up together. An agency included in the SSI cannot opt out of the arrangements it is required to agree in the form of the Memorandum.

11. The purpose of the memorandum is to enable the practicalities of co-operation to be agreed locally. This makes good sense because it allows due account to be taken of the variations in the structure and relationships between all the agencies concerned, which differ, from one part of the country to another.

12. The purposes of co-operation are:

- to co-ordinate the involvement of different agencies in assessing and managing risk; and
- to enable every agency, which has a legitimate interest, to contribute as fully as its existing (statutory) role and functions require in a way that complements the work of other agencies.

13. The duty to co-operate may impact in different ways on the Responsible Authorities and duty to cooperate agencies in each CJA Area. However, the fundamental nature of the duty, as defined above, will remain the same, as will the principles upon which it is based:

- **Respect for role**

14. Co-operation depends upon respecting the different role each agency performs and the boundaries which define it. Unless clarity about authority is maintained, responsibility and accountability will become clouded and duty to cooperate agencies may misunderstand the basis upon which they co-operate. In turn, this may cause representatives of those agencies to feel disempowered or professionally compromised – a result, which the statutory basis of the duty is explicitly designed to prevent. Without this clarity, agencies might assume that a referral of a case to either a level 2 or level 3 meeting somehow diminishes or even absolves them of any continuing responsibility, which is not the case.

15. The requirement to draw up a memorandum makes clear that the ways in which the MAPPAs are to co-operate is determined locally. But while the memorandum will helpfully clarify local arrangements, the precise detail of each agency's co-operation will often depend upon the particular circumstances of a case. The collaborative nature of the meeting does not fetter the discretion the representative of each agency retains, nor does it detract from the responsibility each agency retains for making its decisions and carrying them out.

- **Informing and influencing - not command and control - of one agency by another**

16. Co-operation in the MAPPAs is based on the integrity of each agency's existing statutory role and responsibilities. It must be based upon informing and influencing partners. Co-operation cannot be based on the command and control of one agency by another.

- **Co-ordination not Conglomeration**

17. The MAPPAs, and the duty to co-operate specifically, is a means of enabling different agencies to work together – the MAPPAs is not a legal entity in itself but a set of administrative arrangements established to fulfil the requirements under sections 10 and 11 of the Management of Offenders etc (Scotland) Act 2005. Authority rests with each of the agencies involved. While consensus may be reached and joint action agreed, that consensus and action remain the responsibility of each agency playing its legitimate role. The MAPPAs does not aggregate the responsibility and authority of the agencies involved, it clarifies the roles each agency is to play. Co-operation in the MAPPAs must therefore not blur the inherent differences of approach, which characterises the purpose and professionalism of each of the agencies bound by the duty to co-operate.

### **Partnership Working and Primary responsibility**

18. Together, the principles described above and the definition of the duty to co-operate will shape and support the partnership which will be central to the effectiveness of the MAPPAs. Co-operation is most effective where agencies feel they are partners to joint working, not tools. Engaging an agency's co-operation is therefore dependent upon

- identifying that an agency has a legitimate interest or specific responsibility,
- advising about how best it can become involved; and,
- helping it to co-ordinate its involvement with that of other agencies.

19. Effective partnership needs strong leadership. The Responsible Authorities, as their statutory role makes clear, have the primary responsibility for establishing and maintaining the MAPPA. Its leadership of the co-operative, multi-agency assessment and management of risk will involve tasks related to the four basic functions of the MAPPA model:

- the identification of MAPPA offenders and the agencies with a specific responsibility for or a broader interest in the offender;
- information sharing to confirm that responsibility/interest and to inform risk assessment;
- the formal assessment of risk and the contribution each agency can make to the interpretation of all the relevant information about an offender; and,
- co-ordinating and revision of the plans to manage the identified risks.

### **Lead Agency**

20. Optimising co-operation will invariably require that a lead agency be identified. This is important so that once the risk has been assessed and the management planned, implementation is clearly led by the agency which has the primary responsibility for a case. Usually the identification of this agency will be obvious. For example, criminal justice social work will have primary responsibility for offenders released from prisons under statutory supervision. Where an offender is not subject to statutory supervision but is subject to the requirements of sex offender registration, the police generally will have primary responsibility. Where the primary responsibility may not be so clear is where an offender is neither subject to statutory supervision nor required to register as a sex offender. In those cases, the agency which is to play the largest part in managing the risk should take the lead.

21. The clarification of which agency has primary responsibility does not diminish the responsibility each agency has. Nor does it imply that the lead agency has authority over the other agencies co-operating in the management of risk and the review of the arrangements.

22. The agency which has primary responsibility may change as the nature of the risk management plan changes. For example, where a police covert operation is mounted, it is likely that the police will lead.

23. Clarifying the primary responsibility helps preserve the principles of the duty to co-operate and helps ensure that lines of accountability, which can unintentionally become blurred when several agencies work together, are also kept clear. It also assists in the transfer of cases either between areas or within an area from one agency to another when, as a consequence of a formal review, risk is lowered and the arrangements to manage risk are adjusted accordingly.

### **The practicalities of co-operation**

24. The duty to co-operate must therefore involve:
- respect for each agency's role; respect for all the authority (and the limitations of that authority) each role entails and
  - respect for the discretion in using its authority which each agency retains.



25. While co-operation can be co-ordinated through the MAPPA referral systems and by the identification of the agency with primary responsibility, co-operation will not always be plain sailing. Partnerships of the sort embodied by the effective co-operation in the MAPPA can be problematic, particularly when they involve individual offenders who present considerable challenges to the professionals concerned.

26. The memorandum the Responsible Authorities will draw up with the agencies in its area will describe the ways in which they agree to co-operate. The specific activities involved in co-operation will however be determined by the circumstances of each case. The type of activities co-operation will involve can be broken down into four areas:

(i) Providing a point of contact for other agencies: While much of the formal business of co-operation will be conducted at level 2 or level 3 (MAPPP) meetings, co-operation will also entail informal contact. To enable that informal contact and to channel the more formal engagement, it is important that each agency provides a point of contact, someone who can at least signpost the direction to take, if not help smooth the way by brokering introductions and other arrangements.

(ii) Providing general advice about an agency's role and the type of services it provides. This can helpfully involve advice about how those services can be accessed.

(iii) Providing specific advice about the assessment and/or the management of the risks a particular offender poses.

(iv) Co-ordination: this key partnership function requires each agency to perform its role and to carry out its responsibilities, in a way which at best complements the work of other agencies, or at the least does not frustrate or compromise their work.

27. What these activities are and how they can best be organised - how co-operation is achieved – can be established by adopting the three-step approach.

(i) Clarify what it is you would like an agency to do.

(ii) Ask the agency whether that falls within the scope of its role – i.e. whether it is legitimate for it to do it. If it is, then ask:

(iii) How would you do it? This will help clarify the practical information AND who within the duty to co-operate agency will be responsible for co-operating.

28. For clarification and reassurance, it may be helpful to refer at each stage to the statutory definition of the duty and the principles outlined above.

29. Clearly, one of the most important means by which co-operation is achieved is by **sharing information**. Detailed information and guidance on the development of protocols on information sharing is contained in Part 7 of the Guidance.

## **Memorandum**

30. The memorandum to be drawn up by the responsible authorities and the duty to cooperate agencies at local level should at a minimum cover the following areas:

- Legislative provision
- Principles and purposes of the duty to cooperate
- Agencies to which the Memorandum applies
- Roles of agencies involved
- Local protocol(s) on sharing information
- Definitions of terms agreed in the Concordat
- Media handling strategy
- Disclosure arrangements and responsibilities
- Annual report review arrangements

A model Memorandum is provided in the Annex attached.

## **Multi-Agency Public Protection Arrangements (MAPPA)**

### **Model Memorandum of Understanding between the Responsible Authorities (Police, SPS and CJSW) and the Duty to Co-operate Agencies within the Area of (xx) Community Justice Authority**

#### **Statutory Basis**

1. Sections 10 and 11 of the Management of Offenders (Scotland) Act 2005 (see Annex to this Model Memorandum) require the Scottish Prison Service, local authorities and the police as responsible authorities in the area of a local authority to jointly establish arrangements for the assessment and management of risks posed by sex offenders subject to the notification requirements of the Sexual Offences Act 2003, violent offenders convicted on indictment and subject to a probation order or statutory supervision on release from detention or prison and other offenders whose conviction leads the responsible authorities to believe that they may cause serious harm to the public.

2. In addition, the legislation also provides the Health Service with a statutory function as a responsible authority to establish joint arrangements for the assessment and management of risk posed by mentally disordered offenders who are restricted patients within the above defined categories.

#### **Duty to Co-operate**

3. Sections 10(3) and (4) of the Act provide that in establishing and implementing the joint arrangements, the responsible authorities must act in co-operation with such persons as Scottish Ministers specify by Order. As a result it will be the duty of those persons (includes agencies and bodies) specified in the order to co-operate with the responsible authorities. Co-operation must be compatible with the exercise by those persons and authorities of their other statutory functions. It is intended as a means of enabling different agencies to work together but within their legitimate role whilst retaining their responsibility for action. The Act also provides that the Duty to Co-operate is reciprocal and requires agencies to co-operate with each other. The definition of “co-operate” includes the exchange of information. Both public and other agencies are required to act responsibly and jointly to deliver the requirements of the law and compliance with the Duty to Co-operate will be reinforced through regulation and inspection regimes.

4. Section 10(5) of the Act requires the responsible authorities and the duty to cooperate agencies to develop a memorandum such as this, enabling the practicalities of cooperation to be agreed locally.

5. Section 10(7) of the Act defines the “responsible authorities” who are required by section 10(1) to work together to establish joint arrangements for the assessment and management of risks posed by sex and violent offenders. One of the “responsible authorities” is the local authority. It is envisaged that the responsibility for working on the joint arrangements will lie primarily with the Chief Social Work Officer. However, other local authority services, such as education and housing services, will be required to cooperate in the implementation of this work to discharge the corporate responsibility under this function.
6. The following agencies/ bodies in [xx] area with a duty to co-operate are signatories to this Memorandum of Understanding and include:

### **Example**

SACRO  
Serco Ltd (delivering electronic monitoring services)  
(XX) Health Board  
SCRA

### **Principles and Purpose of the Duty to Cooperate**

7. This Memorandum has been prepared by the responsible authorities in consultation with the duty to co-operate agencies. It is founded on the principles defined by Part 6 of the MAPPA Guidance and sets out the purpose of the duty to cooperate and how that duty will be delivered by the agencies party to the Memorandum.
8. All agencies involved with sex and violent offenders and party to this memorandum are committed to working on a reciprocal basis by:
  - sharing relevant information within agreed protocols and the development of good practice in relation to the assessment and management of MAPPA offenders within the area of the CJA ;
  - the effective use of resources to manage those offenders; and
  - co-operating in order to develop and sustain public confidence in the multi agency public protection arrangements.
9. The purposes of co-operation are to co-ordinate the involvement of different agencies in assessing and managing risk to enable every agency which has a legitimate interest, to contribute as fully as its existing statutory role and functions require in a way that complements the work of other agencies.
10. The duty to co-operate relates only to the operational, case-related work involved in assessing and managing the risks posed by sex and violent offenders as defined by section 10 of the Management of Offenders etc (Scotland) Act 2005.
11. As previously stated the duty to cooperate is reciprocal. It requires the Responsible Authorities to co-operate with the Duty to Co-operate agencies, and those agencies to co-

operate with the Responsible Authorities in assessing and managing the risks posed by sex and violent offenders.

12. Duty to co-operate agencies co-operate only in so far as this is compatible with their existing statutory responsibilities. Therefore, the duty does not require the agencies on which it is imposed to do anything other than what they are already required to do. It does require them to carry out their responsibilities, where these relate to sex and violent offenders, however to do so collaboratively with the Responsible Authorities and the other duty to co-operate agencies.

13. The Responsible Authorities and the duty to co-operate agencies must set out the ways in which they are to co-operate in this memorandum. This document constitutes this agreement.

### **Practicalities of Co –operation (Example can be added to or amended locally)**

14. Agencies involved in the process agree to work together.

Representatives will:

- be in a position to make decisions which will commit appropriate resources based on agreed levels of risk assessment and management.
- participate in the assessment and management of sexual and violent offenders, for the effective protection of the public.
- develop an understanding and respect for the differences in agency role and service provision.
- co-operate within their agency's role and statutory power. It should be noted that the arrangements do not aggregate the responsibility and authority of the agencies involved, it clarifies the role each agency is to play.
- carry out confident, appropriate and effective information sharing in accordance with the law and in line with local Information Sharing Protocols.
- ensure that diversity issues /equal opportunities for both members of the public and offenders are taken into consideration when assessing risk and formulating risk management plans. Equality before the law is an essential principle in the area of criminal justice and it is important therefore that legal obligations in relation to race, religion, sexual orientation, age, gender and disabilities are recognised.
- Attend, where appropriate, MAPPAs and other meetings in the delivery of public protection. (In relation to Level 3 MAPPAs meetings, each agency will provide appropriate representation at senior level.)

### **Disclosure of Information**

15. Disclosure of information on registered sex offenders is the responsibility of the **Chief Constable**. The signatories to this memorandum agree that in any situation where the issue of disclosure is a possibility, the case must be referred to the police. Issues around disclosure are also covered at Part 5 of the MAPPAs Guidance on meetings and in the National Accommodation Strategy for Sex Offenders (NASSO - Part 6)

16. Disclosure of information on other offenders subject to the MAPPAs should only be undertaken following discussion with the Responsible Authorities and other duty to cooperate agencies involved.

### **Information sharing**

17. The signatories to this memorandum agree to work to the principles of the Concordat on Information Sharing for Sex Offenders including:

- the implementation and review of national standards (Annex 2 of the Concordat) and
- the adoption and use of the definitions agreed. (Annex 3 of the Concordat.)

18. The protocols appended to this Memorandum provide the basis of the information to be shared between each agency which is a signatory to this memorandum. (N.B.: the Responsible Authorities and Duty to Cooperate agencies should develop protocols on information sharing).

### **Dispute Resolution**

19. The primary objective of the MAPPAs is public protection. There will be occasions when the responsible authorities and/or the duty to cooperate agencies cannot reach agreement. The Memorandum should therefore contain an agreed protocol for speedy dispute resolution. It should be noted however that the responsible authorities and duty to cooperate agencies still retain statutory responsibility for discharge of their statutory function.

### **Annual Report**

20. The agencies party to this Memorandum agree to cooperate with the responsible authorities in the preparation of the annual report under section 11 of the Management of Offenders etc (Scotland) Act 2005 e.g. in the provision of statistics, case studies etc

### **21. Risk Proofing and Quality Assurance**

22. Agencies involved in MAPPAs should agree to ensure that they have processes in place for risk proofing and quality assurance of their functions and duties.

### **Media Handling Strategy (Example)**

23. The management of MAPPAs offenders requires effective partnerships between all agencies. This includes a joint approach to the media and handling of publicity.

24. The agencies party to this memorandum agree to the following media strategy in relation to the provision of information on individual cases and on the operation of the MAPPAs arrangements.

The strategy should include but is not limited to the following:

- The responsible authorities i.e. police, social work, SPS and health board will designate a senior member of staff as a communications or media spokesperson to

whom all routine and emergency enquiries or concerns can be referred by the duty to cooperate agencies

- The responsible authorities will liaise with duty to cooperate agencies to ensure that they are aware of media attention or impending media reports.

### **Status of the Memorandum of Understanding**

25. This Memorandum is a working document and subject to review and may be altered at any time to reflect changing circumstances. Such changes will be subject to the agreement of all parties.

26. The review of this document will take place on [Set date for review]

27. The parties to this Memorandum are: [List parties].....





*Assessing and  
managing risks  
posed by certain  
offenders*

**10 Arrangements for assessing and managing risks posed by certain offenders**

(1) Subject to subsection (11), the responsible authorities for the area of a local authority must jointly establish arrangements for the assessment and management of the risks posed in that area by any person who-

(a) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);

(b) has been convicted on indictment of an offence inferring personal violence and-

(i) is subject to a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c.46);  
or

(ii) is required, having been released from imprisonment or detention, (or will be required when so released), to be under supervision under any enactment or by the terms of an order or licence of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;

(c) has, in proceedings on indictment, been acquitted of an offence inferring personal violence if-

(i) the acquittal is on the ground of insanity; and

(ii) a restriction order is made in respect of the person under section 59 of that Act of 1995 (hospital orders: restriction on discharge);

(d) has been prosecuted on indictment for such an offence but found, under section 54(1) of that Act of 1995 (insanity in bar of trial), to be insane; or

(e) has been convicted of an offence if, by reason of that conviction, the person is considered by the responsible authorities to be a person who may cause serious harm to the public at large.

(2) It is immaterial-

(a) for the purposes of paragraph (a) of subsection (1), where the offence by virtue of which the person is subject to the notification requirements was committed (or, if the person is subject to the notification requirements by virtue of a finding

under section 80(1)(b) of the Sexual Offences Act 2003 (c.42), where anything that he was charged with having done took place);

(b) for the purposes of paragraph (b) or (e) of that subsection, where the offence of which the person has been convicted was committed; or

(c) for the purposes of paragraph (c) or (d) of that subsection, where anything that the person was charged with having done took place.

(3) Subject to subsection (11), in the establishment and implementation of those arrangements, the responsible authorities must act in co-operation with such persons as the Scottish Ministers may, by order made by statutory instrument, specify.

(4) Subject to subsection (11), it is the duty of-

(a) any persons specified under subsection (3) to co-operate; and

(b) the responsible authorities to co-operate with each other,

in the establishment and implementation of those arrangements; but only to the extent that such co-operation is compatible with the exercise by those persons and authorities of their functions under any other enactment.

(5) In the area of each local authority the responsible authorities and the persons specified under subsection (3) must together draw up a memorandum setting out the ways in which they are to co-operate with each other.

(6) The Scottish Ministers may issue guidance to responsible authorities on the discharge of the functions conferred on those authorities by this section and section 11.

(7) In this section and in section 11, the "responsible authorities" for the area of a local authority are-

(a) the chief constable of a police force maintained for a police area (or combined police area) any part of which is comprised within the area of the local authority;

(b) the local authority;

(c) a Health Board or Special Health Board for an area any part of which is comprised within the area of the local authority; and

(d) the Scottish Ministers.

(8) The Scottish Ministers may by order made by statutory

instrument amend the definition of the "responsible authorities" in subsection (7).

(9) A statutory instrument containing an order under-

(a) subsection (3) is subject to annulment in pursuance of a resolution of the Parliament;

(b) subsection (8) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

(10) Different provision may be made under subsection (3) for different purposes and for different areas.

(11) The functions and duties, under the preceding provisions of this section and under section 11, of the responsible authorities mentioned in subsection (7)(c) extend only to the establishment, implementation and review of arrangements for the assessment and management of-

(a) persons subject to an order under section 57(2)(b) of the Criminal Procedure (Scotland) Act 1995 (c.46) (imposition of special restrictions in disposal of case where accused found to be insane);

(b) those subject to a restriction order under section 59 of that Act (provision for restrictions on discharge);

(c) those subject to a hospital direction under section 59A of that Act (direction authorising removal to and detention in specified hospital); or

(d) those subject to a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (transfer of prisoners for treatment for mental disorder).

(12) But it is the duty of the responsible authorities mentioned in subsection (7)(c) to co-operate (to the extent mentioned in subsection (4)) with the other responsible authorities, with each other and with any persons specified under subsection (3), in the establishment and implementation of arrangements for the assessment and management of persons other than those mentioned in paragraphs (a) to (d) of subsection (11).

(13) In subsection (7)(c)-

"Health Board" means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29); and

"Special Health Board" means a board so constituted under

section 2(1)(b) of that Act.

(14) The reference in subsection (7)(d) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

## **11 Review of arrangements**

(1) The responsible authorities must keep the arrangements established by them under section 10 under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.

(2) As soon as practicable after the end of each period of 12 months beginning with 1st. April, the responsible authorities must-

- (a) jointly prepare a report on the discharge by them during that period of the functions conferred by section 10;
- (b) publish the report in the area of the local authority; and
- (c) submit the report to the community justice authority within the area of which the area of the local authority is comprised.

(3) The report must include-

- (a) details of the arrangements established by the responsible authorities; and
- (b) information of such description as the Scottish Ministers have notified to the responsible authorities that they wish to be included in the report.

## **DUTY TO COOPERATE - ROLES AND RESPONSIBILITIES**

This part of the Guidance outlines the roles and responsibilities of each duty to cooperate agency. The detail will be agreed in the Memorandum which the responsible authorities and duty to cooperate agencies are required by section 10 (5) of the Management of Offenders etc (Scotland) Act 2005 to draw up in the area of each local authority, setting out the ways in which they are to cooperate with each other.

### **LOCAL AUTHORITY SOCIAL WORK SERVICES**

#### **Chief Social Work Officer**

Each Authority will have a designated Chief Social Work Officer who is responsible for the “oversight” of services.

This includes:

- monitoring of all social work services (including those that are purchased);
- advising;
- challenging policy or practice.

This includes the local authority responsibilities for:

- assessment and management in relation to probation, community service, supervised attendance and throughcare established by the Social Work (Scotland) Act 1968 Section 27
- assessment and management of certain offenders who may pose risks (the Sexual Offences Act 2003 and the Management of Offenders Etc (Scotland) Act 2005)

Different local authorities have different departmental structures, they may provide services themselves or in partnership with other agencies. They also vary in which ancillary services they provide. Different local authorities may be involved in the provision of pilot schemes that are not available throughout the country for example, the provision of specialist courts or various community disposals.

#### **Adult Offenders**

The Local Authorities provide a range of social work and social care services, including the provision of criminal justice services. The core criminal justice responsibilities are: the provision of reports to Court and Parole Board; supervision of probation; community service and supervised attendance orders; and the supervision of post-custodial licences, including certain sex offenders sentenced to six months or more. All local authorities provide a Throughcare Addiction Service (TAS), which is voluntary for short-term prisoners, and all persons leaving custody are entitled to apply for voluntary aftercare up to 12 months after leaving custody.

National Objectives and Standards for Criminal Justice Social Work lay down that reports to Court or the Parole Board should include a risk assessment and any action plan for someone on probation or a post-custodial licence should include a risk management plan aimed at reducing the risk of re-offending or the risk of serious harm. Supervision of these orders or licences should be informed by the risk management plan.

The Irving Report recommended that when the risk assessment was undertaken on a registered sex offender this should be done jointly with the police; the police should be notified of any change to the risk assessment and at the end of supervision another risk assessment should be undertaken.

### **Young Offenders and Children who Offend**

Local authorities provide services to adult offenders, and to young people who offend or who are at risk of offending. This covers anyone up to the age of 16 who is offending, including registered sex offenders, and may cover those between 16 and 18. It may be that the Children's Service rather than the adult service supervises young people on probation.

Children who offend are considered to be children in need and are governed in the main by the principle that the paramount consideration must be the welfare of the child. However, The Children Scotland Act 1995 (sec 16/17) states there may be exceptions to this for the purposes of protecting members of the public from serious harm (whether or not physical harm). In those kinds of situations, a local authority may act or take decisions which are not consistent with affording paramount consideration to the welfare of the child.

### **Child Protection**

In addition to the services to adult and young offenders, local authorities have a duty to promote the well being of children, and to identify and respond to abusive or adverse situations. Each local authority will provide child protection guidance on how its staff will fulfil their child protection duties. Specifically they are required to make enquiries about any children referred to them in order to determine:

- if they are in need;
- if compulsory measures of supervision are required; or
- if a child protection or exclusion order is needed for their protection.

On the basis of information gathered, the social work service will determine if a multi-agency plan is needed for the support of the child. This will be developed as part of a multi-agency case conference and may include a decision to place the child on the Child Protection Register or to refer the child to the Children's Reporter.

Where urgent action is needed, the social work services may apply either for an exclusion order against the person who is likely to place the child at risk or a child protection order to

remove the child or agree with the parents for the child to be looked after by the local authority or another responsible person.

In addition each local authority will be part of a multi-agency approach to child protection lead by a Child Protection Committee. The Committee will issue multi-agency guidance laying out the points of contact, guidance etc.

### **Vulnerable Adults**

Local authorities will also be party to arrangements to protect vulnerable adults: those aged over 16 who, by virtue of, or may be disadvantaged by, physical or emotional frailty, old age, intellectual impairment caused by disability or illness, mental illness or other mental health problems **and** who is unable to take care of himself or unable to protect himself from significant harm.

In the absence of an identified local contact, agencies should contact the Chief Social Work Officer.

## **THE POLICE**

28. The Police have a duty to uphold the law by preventing the committing of offences, by preserving order and by protecting life and property. They have risk assessment procedures in place to ensure the safety and wellbeing of any individual who considers themselves to be in a threatening situation. The responsibilities of the Police in relation to registered sex offenders are to maintain an accurate record of those persons in the Police Force area who are required to register with the police in terms of sex offender legislation; to initiate enquiries where such persons fail to comply with the requirements placed upon them; to participate in the multi agency process established for assessing and managing the risk presented by sex offenders or other potentially dangerous offenders in the community; and to develop, in conjunction with partner agencies, risk management plans for the purpose of monitoring and managing sex offenders. The Police also have a responsibility to keep records on unregistered sex offenders whose current behaviour is of concern.

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## **THE SCOTTISH PRISON SERVICE (SPS)**

29. For all prisoners, the SPS is responsible for carrying out risk and needs assessments to assist in determining the management of the prisoner during sentence and in preparation for pre-release planning and release. SPS is also responsible for pro-active joint working with the Criminal Justice Social Work (CJSW) supervising officer during sentence and in preparation for release. This process of sentence planning is referred to as Integrated Case Management (ICM). A key objective of ICM is to ensure that, along with police and CJSW, SPS meets statutory requirements to establish joint arrangements for assessing and managing the risk posed by sex offenders, including the sharing of information.

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## **ELECTRONIC MONITORING SERVICE PROVIDERS**

Electronic Monitoring Service providers are included in the duty to co-operate in acknowledgement of the important service they can provide as part of a high risk management plan. Currently the Scottish Executive contract for the provision of electronic monitoring in Scotland is with **SERCO Ltd**.

Serco's duty to co-operate is to be understood as being synonymous with their contractual responsibilities.

In practical terms this may involve them:

- providing a point of contact for advice to the Responsible Authorities on the available technology, explaining what it can and cannot do; and
- attendance by a member of the SERCO Ltd management team at MAPPA or MAPPP meetings when the circumstances of a particular case deem it appropriate for them to do so.

It is recognised that electronic monitoring has a part to play in supporting and adding robustness to an offender's licence which may contain a number of specific conditions. SERCO Ltd must ensure that appropriate protocols are put in place to share information about MAPPA offenders. These protocols will shape communication with partner agencies and ensure that information on any failure by the offender to comply will be passed to appropriate agencies within an agreed time scale.

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## **EDUCATION AUTHORITIES**

Local Authority Education Services must act in cooperation with other responsible authorities and duty to cooperate agencies in the management of offenders under sections 10 and 11 of the Management of Offenders Etc (Scotland) Act 2005. This duty will be performed in the context of the local or relevant Multi-Agency Public Protection Arrangement (MAPPA) but only insofar as this is compatible with existing statutory responsibilities.

### **General Responsibilities**

Education Authorities are statutorily required to ‘make adequate and efficient provision of school education’ (Education Scotland Act 1980) for their area. They are further required to develop the ‘personality, talents, mental and physical abilities’ of children and young people to their ‘fullest potential’ (Standards in Scotland’s Schools Act 2004). They have a duty to identify and keep under consideration any additional support needs of any kind that children and young people may have and to meet such needs, in cooperation with other authorities and bodies in certain circumstances (Education Additional Support for Learning Scotland Act 2004), reinforcing their shared, corporate responsibilities under the Children Scotland Act 1995 to make provision for children ‘in need’.

They have therefore a dual role in providing education, and in developing and nurturing children and young people.

### **Working Cooperatively**

Increasingly, education services are working in an integrated way with social work, health, the voluntary sector and other relevant bodies (e.g. police) in the following areas:

- Planning and delivery of services
- Assessment and information sharing about individual children and families
- Ensuring child protection
- Significant incident review
- Quality assurance and inspection

Local authorities are required to publish plans for Children’s Services, whilst integrated inspections of these services (initially in respect of child protection) are underway and will soon extend to all services for children.

Thus, national and local governance arrangements and practice; frameworks, protocols and procedures for partnership working and cooperation already exist across a number of the responsible authorities and ‘duty to cooperate’ agencies.

### **Disclosure**

Education Authorities already cooperate with relevant bodies in relation to the disclosure of information and the assessment of risk for offenders. A further consideration for education services will be their duties under the Protection of Children Scotland Act 2003 to refer onto the list of people disqualified from working with children, anyone with a relevant conviction or anyone who has been dismissed or transferred or moved where there was judged to be risk of harm to children. It is an offence to employ such people. Education Authorities have a

similar but wider ranging legal duty to refer matters concerning the conduct of certain staff to the General Teaching Council (Scotland).

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## **VOLUNTARY SECTOR**

The statutory authorities can commission services from the voluntary sector to support, complement and enhance their own provision.

The voluntary sector agencies include the larger organisations such as Sacro and APEX that specialise in work with offenders and also those that provide services such as supported accommodation to a range of service user groups.

The range of services that are provided to offenders that pose risks include:

- Intensive support and monitoring
- Residential facilities
- Supported flats and tenancies
- Bail supervision
- Services related to alcohol and drug misuse
- Group work programmes
- Voluntary throughcare
- Employability support services

Through the provision of these services, voluntary sector staff are in a key position to share information. They observe their service users outwith formal office settings, often when they are relating to other people in the community. Their contact with offenders is often more frequent and intense than is possible for statutory workers. This places them in a strong position to contribute to risk assessment and risk management.

By providing information, they can assist the statutory services in their assessment, monitoring and supervision roles. They themselves provide support that can help to reduce risk. Stable accommodation, training and employment are factors that can have a major impact in risk management.

Voluntary sector staff expect information sharing to be very much a two way process. They must also receive good information about risk factors in relation to the people they work with. This is necessary not only to ensure the safety of their own staff but also to more effectively monitor behaviour and report potential risks as they may develop.

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## SCRA - THE ROLE OF THE PRINCIPAL REPORTER

The Principal Reporter's has a statutory role in relation to the Children's Hearings System. The role relates predominantly to 2 groups of children<sup>5</sup>:

1. children who are the subject of a current referral to the Principal Reporter as they may be in need of compulsory measures of supervision (a "supervision requirement"); and
2. children who are the subject of a supervision requirement.<sup>6</sup>

The Principal Reporter delegates to individual Children's Reporters his or her statutory duties relating to these children. The role of the Scottish Children's Reporter Administration ("SCRA") is to support the Principal Reporter in the exercise of his or her statutory functions. Although SCRA is a national body, it has a local presence in each local authority area. Each local authority area has an Authority Reporter. In the larger local authority areas there are more than one Authority Reporter.

Children are referred to the Principal Reporter for a variety of reasons, but principally because of concerns regarding their care or protection or because they are involved in offending behaviour. In relation to these children, the Principal Reporter has a statutory role to:

- investigate the circumstances of a child who has been referred, if such an investigation is necessary;
- refer a child to a children's hearing if the Principal Reporter decides that the child requires compulsory measures of supervision;
- arrange any children's hearing, ensuring that relevant written material is provided to the children's hearing, and to record the proceedings of that hearing;
- appear in the sheriff court in any proof hearing in relation to the reason that a child was referred to a children's hearing; and
- notify certain parties of the outcome of the referral of the child.

In relation to children who are the subject of a supervision requirement, the Principal Reporter has a statutory role to:

- arrange any children's hearing to review the child's supervision requirement, ensuring that relevant written material is provided to the children's hearing, and to record the proceedings of that hearing;
- notify certain parties of the outcome of that review hearing; and

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<sup>5</sup> For the purposes of this note, "child" is as defined in section 93 of the Children (Scotland) Act 1995. Principally this definition refers to:

- Any person under the age of 16 years
- Any person of 16 or 17 years of age who is the subject of a supervision requirement.

<sup>6</sup> The other children or young people (i.e. those aged 16 or 17 that are not the subject of a supervision requirement) in relation to whom the Principal Reporter has a statutory role are:

- Children or young people who have been prosecuted in court for an offence and have pled guilty or been found guilty of an offence and the court has:
  - Requested the advice of a children's hearing as to the disposal of the case; or
  - Remitted the case to a children's hearing for the disposal of the case.
- Children who are the subject of an application for an antisocial behaviour order in relation to whom the court has requested advice.
- Children who have been charged with an offence that has resulted in them being jointly reported to the Procurator Fiscal and the Children's Reporter.

- conduct a further investigation and decide whether a children's hearing to review the child's supervision requirement is required in the event of such a child being referred again to the Principal Reporter.

It is important to note that where a child is the subject of a supervision requirement, it is the local authority that has the ongoing statutory responsibility to safeguard and promote the child's welfare.

Although the Principal Reporter has a statutory role in relation to a children's hearing, the children's hearing is independent of the Principal Reporter. The children's hearing decides whether a child requires compulsory measures of supervision and if so, what form they should take.

Since the coming into force of the Antisocial Behaviour etc. (Scotland) Act 2004, the Principal Reporter also has a statutory role in relation to:

- considering whether to apply, and then applying to the sheriff court for a parenting order; and
- applying to the Sheriff Principal in relation to any duties imposed on a local authority.

There are 2 groups of children in relation to whom the Principal Reporter is likely to have contact with the MAPPAs:

1. a child who has contact with an adult offender who is known to the MAPPAs; and
2. a child to whom section 10(1) of the Management of Offenders etc (Scotland) Act 2005 applies<sup>7</sup>.

However, the Principal Reporter will *only* be involved if the child is in one of the children, identified above, in relation to whom the Principal Reporter has a statutory role.

In these cases the Principal Reporter is likely to:

- request information from one or more of the "responsible authorities" as part of the Principal Reporter's investigation into the referral of a child;
- provide information to one or more of the "responsible authorities" as part of that investigation;
- request information from one or more of the "responsible authorities" when arranging a children's hearing to review a child's supervision requirement;
- provide information to one or more of the "responsible authorities" regarding the outcome of any referral or any children's hearing; and
- request information (and possibly call a person as a witness) from one or more of the "responsible authorities" in the course of a proof hearing.

Given the nature of the Principal Reporter's involvement in MAPPAs cases, there are likely to be limited circumstances in which an Authority Reporter (or a member of his/her team) will attend a MAPPAs meeting in relation to a particular case.

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<sup>7</sup> It is important to note that section 10(1) does *not* apply to a child who committed an offence where the offence was disposed of by a decision of either the Principal Reporter or a children's hearing. Therefore section 10(1) would only apply to a child if he/she had previously been prosecuted in the adult criminal justice system.



## HOUSING AGENCIES

30. Housing agencies under a duty to co-operate are local authority housing services and providers and RSLs. Their role is to contribute to the management of risk identified by Responsible Authorities by:

- co-operating with the Responsible Authorities by providing accommodation
- liaising with the Responsible Authorities on the ongoing management and monitoring of the risk of the offender as tenant, including any tenancy moves or evictions
- having regard to community safety and having in place exit strategies where a property is no longer suitable and/or the offender's safety is at risk.

The roles and responsibilities of housing providers in relation to housing sex offenders fall into two categories – strategic and operational. The strategic role and responsibilities are outlined below. The operational role will be detailed in the new Practice Guidance which replaces the 1999 CIH Practice Guidance.

### Strategic role

31. The local authority (including a local authority which has transferred its housing stock to an RSL) is responsible for ensuring the development of a strategic response to the housing of sex offenders. However, in any local authority area there is likely to be a multiplicity of housing providers and local authorities must involve and consult RSLs in their area in developing their strategic response. This should include an assessment of local need and provision for the range of accommodation for sex offenders and should clarify the contribution by RSLs in their area.

32. It is the responsibility of the local authority to provide an initial single point of contact for accommodation requests from Responsible Authorities. This single point of contact is the SOLO which will provide strategic co-ordination in relation to housing sex offenders within any local authority area. The SOLO role involves:

- identifying the most appropriate housing provider following the risk assessment carried out by the Responsible Authorities
- ensuring that, when an appropriate housing provider has been identified, that the housing provider is included by the Responsible Authorities in liaison arrangements relevant to the identification of appropriate housing and the management of risk
- liaising pro-actively with Responsible Authorities and housing providers on ongoing risk management and community safety issues

33. **Individual housing providers** should have in place policies and processes in relation to the housing of sex offenders and the management of risk which are agreed with their governing bodies and conform to the new Practice Guidance. They have a responsibility to take part in the development of local protocols for the sharing of information. They should:

- identify a Link Officer (or officers) to liaise with the SOLO and Responsible Authorities. Where possible there should be more than one link officer identified to allow for back up.
- provide information on housing stock and voids to the SOLO at agreed intervals (in accordance with a negotiated agreement)
- respond to specific requests by the SOLO about the availability of housing in relation to the accommodation needs of sex offenders prior to their release from custody
- have in place processes for responding to requests from the SOLO to house sex offenders
- assist in the management of risk by advising on the suitability of accommodation in regard to location and make up of households
- keep the SOLO advised of any proposed house moves or house purchases by sex offenders
- ensure Link Officers take part, where appropriate, in any relevant case conferences
- ensure processes are in place within the organisation to protect staff dealing with the sex offender, for example, in the case of home visits

34. Housing providers depend on effective information protocols and a co-ordinated approach by Responsible Authorities. Responsible Authorities must therefore ensure that:

- they have effective liaison arrangements in place with the SOLO.
- housing providers receive (through the protocols for information sharing) sufficient information to manage and minimise risk in tenancies occupied by sex offenders
- they respond effectively to ongoing issues of community safety identified by housing providers

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**NATIONAL ACCOMMODATION STRATEGY  
FOR SEX OFFENDERS IN SCOTLAND**



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## INTRODUCTION

1. This strategy provides a new national framework for the accommodation of sex offenders in the community. It has public safety at its heart and forms part of an extensive package of Scottish Executive reforms to the criminal justice system, which strengthen the provisions for the management of sex offenders in Scotland.

2. The strategy:

- supports the aims of protecting children, vulnerable adults and the wider community and of reducing re-offending;
- applies to all known sex offenders including those registered under the Sexual Offences Act 2003 (previously the Sex Offenders Act 1997); those subject to bail conditions but not yet convicted; those with convictions pre-dating the 1997 Act who are therefore unregistered; and those sex offenders whose period of registration has terminated;
- covers all housing tenures across public and private housing, recognising that sex offenders reside in all forms of tenure;
- sets out the role of housing and accommodation in contributing to the effective management and minimisation of the risk posed to communities by sex offenders;
- clarifies the respective roles and responsibilities of local authorities, housing providers and other statutory agencies in relation to the accommodation of sex offenders;
- aims to ensure consistency and coherence in proactive joint working between agencies across Scotland in arranging and managing the accommodation of sex offenders; and
- sets out requirements and expectations for information sharing with housing and accommodation providers.

3. The strategy is relevant to all public bodies and other agencies with responsibility for managing sex offenders in Scotland – most notably “Responsible Authorities” (local authorities, Police, Scottish Prison Service, and NHS Scotland) and other agencies with a “duty to co-operate” (local authority housing services and Registered Social Landlords) under the Management of Offenders etc. (Scotland) Act 2005.

4. It is aimed particularly at, and is essential reading for, elected and Board members, Chief Executives, Directors of Services and senior staff in local authorities, Directors of Registered Social Landlords (RSLs), Chief Police Officers, Prison Governors, and others providing housing, such as associations of landlords and agents. It is supported by new Practice Guidance commissioned by the Executive from the Chartered Institute of Housing (CIH) in Scotland, <http://www.cih.org/scotland/policy/CIH-NASSO-Guidance-2007.pdf> which gives practical direction to housing managers and front-line practitioners in delivering the reformed system for managing the accommodation needs of sex offenders and in keeping these arrangements under constant review.

5. The strategy is founded upon the following key principles, which are based on those endorsed in the Report of the Expert Panel on Sex Offending (Cosgrove Report 2001):

- sex offenders should not be given special housing treatment merely because they are sex offenders. But where a sex offender is assessed as being a risk to the community, and in need of accommodation, their housing application needs to be processed in line with this strategy and the CIH practice guidance. Social landlords need to make clear in their published rules that housing allocations to sex offenders may be decided outwith the normal operation of the existing rules, where the interests of public safety require this.
- any additional or unusual arrangements made to accommodate a particular offender should be in the context of managing risk and improving public safety, e.g. in response to a risk of exposure in the community, victim issues, or a risk of serious harm or re-offending.
- sex offenders should normally be accommodated in mainstream housing within the local authority area from which they originate, although in certain circumstances placements in alternative local authority areas may be appropriate.
- sex offenders cannot be excluded from housing. Blanket exclusions of sex offenders are illegal (since everyone in Scotland aged 16 or over has a statutory right to be admitted to a housing list), while suspensions of sex offenders from offers of housing will undermine risk management arrangements by increasing the risk of a sex offender being lost from the system.

## **SEX OFFENDING**

6. The term “sexual offence” covers a wide range of criminal offences characterised by a sexual motive or inappropriate sexual behaviour. Sexual offences can cause significant and sustained emotional, psychological and physical damage to the victim, as well as fear and alarm to the wider community. There is no typical sexual offence and no typical sex offender. Not all sexual offences and offenders may be seen as inherently problematic or dangerous to the wider public. It is important to make distinctions between sexual offences. For example, an offence of under-age sexual intercourse between, say a 17 year old boy and a 15 year old girl who are in a relationship is unlikely to lead to future harm to the public. However, rapists or “Schedule One Offenders” who are deemed by Schedule One of the Criminal Procedure (Scotland) Act 1995, to have committed serious crimes against children, may well pose future threats to the public.

## **THE ROLE OF ACCOMMODATION IN MANAGING RISK**

### **The importance of stable accommodation**

7. Once they have served a sentence for their offence, sex offenders - as with all offenders - require to be reintegrated within the community. Extensive research and reviews by experts<sup>8</sup> have shown clearly that stable housing arrangements and effective monitoring are key to minimising the risks posed by sex offenders. Stable accommodation contributes both to the successful rehabilitation of the offender and to the protection of the community in which that person lives. Not all sex offenders are imprisoned, and the requirement for stable accommodation applies equally to those who are not imprisoned.

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<sup>8</sup> Cosgrove (2001), Glasgow and Sheffield Hallam (2005)

8. In particular, more specific studies have shown that:
- support coupled with stable accommodation can directly address the risk factors associated with further offending, and enables individuals to benefit from supervision and other forms of treatment<sup>2</sup>
  - offenders whose main problem was housing or accommodation were significantly less likely to complete behaviour modification programmes than offenders who did not have that problem<sup>3</sup>
  - placements in tenancies can support on-going risk management by all of the agencies involved where formal protocol arrangements are in place to enable exchange of sensitive information about individuals<sup>4</sup>

### **The changing housing context**

9. Sex offenders reside in all forms of tenure in both public and private housing – owner occupied, private and social rented sectors. The complexity of managing the accommodation of sex offenders in the community has increased as housing policy has given rise to a greater diversity of housing providers and housing responsibilities at local levels.

10. More people now own their home in Scotland than ever before (around 65% compared with 36% in 1981), mainly as a result of Council tenants having exercised the Right to Buy. Private renting has been relatively static at around 7% of the population, although “Buy-to-Let” activity may increase that proportion. Executive policies, including registration of all private landlords under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004, aim to ensure that the private rented sector’s role is better recognised and its contribution to meeting housing need is enhanced.

11. Social housing is experiencing further significant and fundamental change where tenants vote to transfer ownership of social housing stock to RSLs. In these cases, local authorities retain strategic responsibility for planning to meet housing need in their areas through their Local Housing Strategies (LHS), as well as their statutory responsibilities under Homelessness legislation.

12. Important changes are also occurring in the arrangements by which prospective tenants access social housing. Common Housing Registers (CHRs) allow applicants to apply to a range of landlords using a single application form. Choice-Based Letting (CBL) systems provide the applicant with the opportunity to identify preferred housing, rather than being made an offer by the housing provider in response to an application. The emergence of these new approaches presents both opportunities and challenges. CHRs provide opportunities for improved joint working between landlords in the housing of sex offenders, but present additional challenges around secure storage of information and preserving confidentiality. CBL systems present particular challenges around the need for restrictions in choice when allocating housing to sex offenders.

13. Changes in 2001 to the legislation governing homelessness added ex-offenders, including sex-offenders, to the list of possible vulnerable persons who entitled to be

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<sup>2</sup> Barker and Collet (2000)

<sup>3</sup> Roberts (2000)

<sup>4</sup> Wing (1998)



considered to be in priority need. Further changes to homelessness legislation in 2003 mean that, as from 2012, the priority need categories will be abolished and all unintentionally homeless persons will be entitled to permanent accommodation.

14. This strategy is, therefore, also a response to the increased complexity arising from this changing housing context, with the aim of ensuring clarity, consistency and coherence in collaboration between different agencies for the accommodation of sex offenders.

## **THE NEW FRAMEWORK FOR MANAGING OFFENDERS**

15. As part of its commitment to improving public safety, the Executive has undertaken radical reform of the criminal justice system. At the heart of the reforms is the Management of Offenders etc. (Scotland) Act 2005, whose provisions directly affect local authority housing services and social housing providers.

### **Responsible Authorities**

16. The Act places a statutory function on local authorities, the Police, and the Scottish Prison Service (SPS) - known as “Responsible Authorities” – to jointly establish arrangements for assessing and managing the risks posed by sex offenders and violent offenders and those who may cause serious harm to the public. Health Boards are included in the joint arrangements in respect of the risk posed by mentally disordered offenders (restricted patients only) who have committed violent offences or who are sex offenders and the court has considered it necessary to apply a restriction order. The provisions relating to sex offenders are effective from 2 April 2007.

17. The new arrangements, known as Multi Agency Public Protection Arrangements (MAPPA) provide a framework for the delivery of a consistent approach to the assessment and management of risk by the Responsible Authorities and agencies under a “duty to co-operate”. The framework comprises 4 core functions:

- the identification of MAPPA offenders
- the sharing of relevant information
- the assessment of the risk of serious harm
- the management of that risk

18. The MAPPA allow agencies to work together whilst retaining the statutory authority and responsibility for the discharge of their functions. The roles of the Responsible Authorities in relation to accommodation are explained in the section setting out ‘the roles of Responsible Authorities and housing agencies in a joint approach’.

### **Duty to co-operate**

19. Under the 2005 Act, and within the MAPPA arrangements, the Responsible Authorities are required to act in co-operation with each other and with other key agencies placed under a duty to co-operate, as defined by Order under section 10(3) of the Act. The key agencies under a duty to co-operate include local authority housing services and RSLs.

20. Section 10(7) of the Act defines the Responsible Authorities that are required, by section 10(1), to work jointly to establish arrangements for the assessment and management of the risks posed by sex and violent offenders. One of the Responsible Authorities is the local authority. The responsibility for implementation of the joint arrangements lies primarily with the Chief Social Work Officer. However, other local authority services, such as housing services, are also be required to co-operate in the implementation of this work to discharge the corporate responsibility under this function. Local authority services are not identified in the Order under section 10(3) but the requirements under the duty to cooperate will be discharged by virtue of their responsibility under section 10(7).

21. The duty to co-operate is reciprocal and co-operation must be compatible with the statutory functions of any given agency. The duty is intended as a means of enabling different agencies to work together but within their legitimate role and retaining their responsibility for action. The Act also provides that the agencies under a duty to co-operate require to co-operate with each other. The definition of “co-operate” includes the sharing of information. Both public and other agencies require to act responsibly and to deliver jointly the requirements of the law. Compliance with the duty to co-operate will be reinforced through regulation and inspection regimes.

22. The duty to co-operate will be underpinned by a Memorandum of Understanding prepared by the Responsible Authorities in consultation with the relevant agencies in each local authority area. This will enable the practicalities of co-operation to be agreed locally to ensure that all agencies involved have a clear and mutually agreed understanding of their respective roles and responsibilities.

23. In relation to the accommodation of sex offenders, the new provisions mean that local authority housing services and RSLs have a duty to co-operate with the Responsible Authorities in forging new and improved inter-agency relationships. The implementation of the Order made under section 10(3) of the Management of Offenders etc. (Scotland) Act 2005 in relation to the duty to co-operate will mean that it will no longer be possible for neighbouring authorities or other social housing providers with potentially appropriate accommodation to abdicate responsibility for housing sex offenders in their stock. It is vital that local authorities and RSLs work in partnership accepting that each is under a duty to co-operate. Unlike referrals under the homelessness legislation, there will be no statutory obligation on RSLs to provide accommodation to the local authority housing services. Rather, local authorities and RSLs must work together to ensure that they are each able to satisfy the duty to co-operate in relation to requests from the Responsible Authorities.

24. Further guidance in relation to relevant legislation on sex offending is contained in the CIH Practice Guidance.

### **Community Justice Authorities**

25. The 2005 Act also established new Community Justice Authorities (CJAs), which bring together local authorities, the SPS and key partners to make sure that the right services for offenders are in the right place at the right time. Eight CJAs have been established across Scotland since April 2006. The CJAs are not responsible for service delivery – the responsibility for service delivery remains with the statutory and other agencies. Within the CJA areas, MAPPA co-ordinators operate under the employment of one of the Responsible Authorities. An early priority for the CJAs has been to conduct an audit of the

accommodation for offenders within their area as well as practices relating to the provision of accommodation for offenders.

26. A new National Advisory Body (NAB) on Offender Management, which includes housing sector representation, has also been set up to tackle Scotland's high re-offending rates. The NAB will shape long-term national strategy and provide a framework within which CJAs produce, with their key partners, joint area plans for offender management. The NAB and CJAs are concerned with how effectively the various agencies influence offender behaviour, with the aim of reducing re-offending. The Responsible Authorities are responsible for the publication of an annual report, which will be submitted to the CJA and from the CJA to the NAB.

## **ASSESSING AND MANAGING RISK**

27. It is important for agencies and the public alike to recognise that it is not possible to completely eradicate the risks posed by sex offenders living in the community. But it is imperative that all of the agencies involved in the MAPPA act together to minimise these risks through accurate assessment and appropriate supervision and management of offenders, and that they are able to provide reassurance that public protection is maximised through these arrangements.

28. The statutory function in relation to the assessment, management and monitoring of risk lies with the Responsible Authorities (i.e. local authorities, Police, SPS and NHS). The recently established Risk Management Authority, a new public body set up under the Criminal Justice (Scotland) Act 2003, will act as a repository of information, guidance and standards on risk assessment and risk minimisation approaches for those involved in implementing these approaches.

### **Assessing risk**

29. Risk assessment is critical to the management of sex offenders in the community. It entails an assessment of the likelihood of a future negative or harmful event happening and considers the likelihood of:

- an event occurring
- the circumstances in which it may occur
- who is likely to be at risk
- the nature of the harm to which they might be exposed
- the impact and consequences of the harmful event

30. Risk assessment is carried out using Risk Matrix 2000/S, a static statistical tool which measures the risk of future reconviction in relation to sex offending and is in use across Scotland by local authority Criminal Justice Social Work Services (CJSW), Police and SPS. Risk Matrix 2000 places the individual into a risk category by scoring the risk classification into categories of low, medium, high or very high. This assessment is supplemented by the use of a complementary tool to assess dynamic risk factors associated with the individual offender such as behaviour triggers, which might contribute to a change in risk. The use of these tools contributes to the formulation of an individual risk management plan. The

dynamic supervision project tool will be rolled out during 2007 across Scotland for use alongside Risk Matrix 2000/S.

### **Managing risk**

31. Managing risk involves:

- ongoing assessment of risk, since the degree of risk posed by an offender can vary over time as a result of changes in personal or environmental circumstances;
- interventions targeted to reduce the behaviour which constitutes the risk;
- effective communication and sharing of information with all agencies involved with the offender;
- effective communication and sharing of information with the offender;
- planning, implementation and review of interagency protocols;
- devising, co-ordinating, implementing and reviewing risk management plans;
- provision of a service targeted at the risk level e.g. a high risk of harm would indicate an intensive service required.

### **The housing contribution**

32. Sex offenders reside in all forms of tenure in both public and private housing and all should be subject to consistent systems of risk assessment and appropriate management. The distribution of offenders across public and private housing means that the location of an offender in any tenure may have implications for adjacent housing, including allocations to and management of that housing, and visits by support staff such as housing officers. It is crucial, therefore, that housing providers that are accommodating sex offenders are included in inter-agency forums for ongoing planning and reviews of risk management.

33. The task of managing risk is to ensure that all reasonable measures are taken to minimise risk and it is not the sole responsibility of any one agency. It demands a co-ordinated approach, involving highly effective communication and consistent responses across agency and professional boundaries.

34. The Responsible Authorities may ask local authority housing providers and RSLs to contribute to the management of risk by providing stable accommodation for a sex offender. They will initiate this process through contact with a Sex Offenders Liaison Officer (SOLO) in the local authority strategic housing function. This may be one or more officers who will be the initial point of contact for equivalent liaison officers within the Responsible Authorities. The SOLO function may be delegated to an RSL (or RSLs) if this is considered appropriate e.g. where there has been whole stock transfer from the local authority to an RSL. The SOLO will operate as the link between the Responsible Authorities and housing providers and a list of SOLOs will be compiled and made available to these agencies.

35. Local authority housing providers and RSLs have a duty to co-operate with the Responsible Authorities in relation to their role in the provision of accommodation; they do not have a role to play in assessing the risk level of the offender. The contribution of local authority housing providers and RSLs is towards the management of that assessed risk through their role as providers and managers of housing. The key mechanisms for assessment and review are:

- the “Integrated Case Management (ICM)” of offenders (described at paragraphs 56 and 57) within prisons, prior to a sex offender’s release; and
- the MAPPA for the management and monitoring of the sex offender in the community.

36. Responsible Authorities should involve the SOLO, where appropriate, at the risk assessment stage in order that accommodation issues can be considered early in the process. They should also consider involving the SOLO as a standing member of the MAPPA to enable responsible authorities to benefit from housing expertise when preparing risk management plans.

### **Address and block profiling**

37. In carrying out a risk assessment, Responsible Authorities will identify risk factors, the geographical area and preferred location in order to minimise risk to communities. Key tools in managing risk associated with the accommodation of sex offenders are “address and block profiling”.

38. Address profiling is undertaken by CJSW and the Police when a sex offender is seeking accommodation. In practice this relates to offenders being released from prison and presenting as homeless or of no fixed abode, offenders moving from one area to another area, and those sex offenders applying for new or alternative housing.

39. An address profile takes into account the geographical location of proposed accommodation alongside the infrastructure of the local area (proximity to parks, schools, community centres, etc.). It is informed by relevant information held by CJSW, the Police and the SOLO regarding the implications of housing a sex offender in a particular location and for future housing allocations in that neighbourhood. It should also take account of whether it is practicable for the housing provider to limit allocations and the likely make up of future households in the vicinity of a housed sex offender.

40. A process used by CJSW and the Police, working with housing agencies, to inform and monitor housing allocations in the vicinity of a housed sex offender is “block profiling”. This process allows staff to select potential applications for a vacant property taking account of particular characteristics of the block and neighbouring residents (e.g. house not suitable for young tenants or suitable for elderly tenants). This will minimise the likelihood of inappropriate allocations. This process needs to be reviewed on a regular basis as changes occur in the composition of residents in the area.

41. The initial risk assessment of each individual sex offender should determine the nature, extent, and frequency of address and block profiling to be specified in, and carried out as part of, the risk management plan for that offender. Depending on the level of risk posed by an individual sex offender, there may be a need for address and block profiling to be repeated at specified intervals, or in response to new information coming to the attention of the Responsible Authorities, in order to contribute to the effective risk management of that offender.

## INFORMATION SHARING AND CO-OPERATION

42. Information sharing and effective inter-agency working is vital to the successful management of sex offenders. The Cosgrove Report stressed the importance of effective information sharing between agencies (police, prosecutors, courts, SPS, CJSW, housing, health and education services and the voluntary sector) and of removing institutional barriers that prevent effective co-ordination of practices and integration of services.

43. To support the requirements under the 2005 Act for effective information sharing and inter agency working, the Executive has introduced:

- **The National Concordat on Sharing Information on Sex Offenders.** Launched and signed by key agencies in March 2005, the Concordat is a set of overarching principles supported by standards on information sharing between key agencies involved in the management of sex offenders in order to maximise public safety. It states that agencies must use agreed definitions and follow agreed standards to develop detailed information sharing protocols, according to which the flow of information is to be managed.
- **Information Sharing Protocols.** Designed to ensure that all relevant information is shared within the tenet of existing legislation, they allow each agency to be clear about and address their legal obligations for sharing of information under the Data Protection Act 1998 and other legislation. Guidance on the development and content of protocols is appended to the Concordat. Protocols are a key means by which the duty to co-operate will function and are required as part of the Memorandum of Understanding which define the roles and responsibilities of the agencies involved. Included within the MAPPA guidance (following the NASSO) is a checklist which sets out relevant standard information which should be shared with housing providers under the duty to co-operate, in circumstances where there is an assessed risk. This standard information includes the type of offence; the group at risk from the offender; the area where victims are housed; the risk to the community; the risk to staff; the key support arrangements in the risk management plan following an offender's release; and the potential for media interest. The basic checklist may be adapted and supplemented with additional relevant information to suit local circumstances and individual cases.

**Part 7** of the MAPPA guidance incorporates the National Concordat on Sharing of Information on Sex Offenders and the Guidance on the development of Protocols on Information Sharing.

- **The ViSOR (Violent & Sex Offender Register) Information System.** A UK wide database which records information on sex and violent offenders across police boundaries, ViSOR is available to all police forces in Scotland making it easier for police to share information about sex and violent offenders. ViSOR will be extended to the SPS and to CJSW in due course. This will mean that the three principal Responsible Authorities will have access to ViSOR. Those records held on ViSOR relate to both registered sex offenders and those unregistered sex offenders whose behaviour is of concern. ViSOR information is very tightly controlled. However, it provides the basis for the sharing of relevant information with housing providers in accordance with the agreed Memorandum and protocols.

44. In the interests of confidentiality and public safety, including the safety of the sex offender, information sharing should always be carried out on a need to know basis. This means that the only people who should have the information are those people who require that information in order to perform their agency's role. Not all sex offenders pose a risk to the community and housing providers will only be advised where there is an assessed risk. Formal protocol arrangements must be put in place for exchange of sensitive information, in accordance with the national Concordat on sharing information and local arrangements.

## **ROLES OF RESPONSIBLE AUTHORITIES AND HOUSING AGENCIES IN A JOINT APPROACH**

45. Responsible Authorities and agencies under a duty to co-operate, including social housing providers, must have a clear understanding of their respective roles and responsibilities in relation to the accommodation of sex offenders and in the co-ordinated management of public expectations. In addition, they must appreciate the interdependence of their respective roles.

46. Housing issues will arise at different stages, requiring the initiating role to be undertaken by the appropriate agency depending on circumstances. For example:

- where a sex offender is leaving prison it will be the role of SPS and CJSW to initiate the process of identifying appropriate accommodation;
- where a sex offender who is a social tenant is moving house, it will be for the housing provider to make contact with the Responsible Authorities;
- where the Police or local authority are aware of behavioural indications that would suggest enhanced risk either to or by the sex offender, they should alert the SOLO and housing provider and, in liaison with the housing provider, review risk management arrangements;
- where the housing provider is made aware of such behavioural indications e.g. through neighbour complaints, it should alert the Police and CJSW through the SOLO.

### **Responsible Authorities**

#### Local Authority

47. The local authority (Chief Social Work Officer) is the Responsible Authority for convicted sex offenders who are subject to notification under the Sexual Offences Act 2003 and to a community disposal or statutory supervision following release from prison. In cases where a sex offender is subject to statutory supervision in the community by CJSW and is also subject to sex offender registration requirements, then the responsibility for the case is shared between the police and local authority.

48. SPS will confirm the selection of the local authority area in which the offender should be accommodated on release. This selection of areas is based on the principle of "ordinary residence", in other words, the area in which the offender ordinarily resides. The confirmed local authority will allocate a supervising officer to the prisoner. In cases where the

offender's ordinary residence is unclear or is in dispute, the Prison Governor will designate the local authority that carried out the social enquiry report on the offender.

49. The overall aims of the work of the supervising officer in CJSW throughout the period of custody and after release are:

- to contribute through joint working to community safety;
- the rehabilitation and re-settlement of the offender; and
- the prevention or reduction of further offending.

50. In addressing these aims, the supervising officer will work closely with the prison and other agencies, including housing services wherever appropriate, in the pre-release planning process which will include risk assessment and management arrangements for the prisoner's release.

51. As well as the responsibilities of CJSW in respect of the supervision of offenders, local authorities have statutory responsibilities in respect of children looked after by the authority, children in need and children who are involved in sexually aggressive behaviours. The wider role of CJSW in relation to statutory responsibilities for the protection of children, as well as the role of other key agencies in child protection, is covered in separate guidance and circulars, in particular the report of the Child Protection and Audit Review "*It's Everybody's Job to make sure I'm alright*" published on 25 November 2002 and SEJD Circular 18/2003 "*Protecting Children: Guidance on the Imprisonment & Preparation for Release of Schedule 1 Prisoners*".

52. The local authority also has an important role to play within prisons through its prison based social work service (PBSWS). The PBSWS provides a major contribution to the delivery of individual and group work programmes, designed to address offending behaviour and related social and personal needs, e.g. substance use or mental health difficulties. The service includes:

- the assessment of the level of risk, which may increase or decrease as a result of these factors;
- the compilation of a range of reports for the Parole Board;
- as part of the integrated case management (ICM) process, the preparation and resettlement of prisoners into the community;
- liaison with a range of agencies within and outwith the institution including the link centre, housing services, CJSW and through-care teams;
- contributing to the MAPPA.

53. **In relation to accommodation**, the primary role of the CJSW supervising officer is:

- to work with SPS in arranging appropriate accommodation for the prisoner on temporary home leave;
- to identify, following the risk assessment process and liaison with the nominated SOLO, the housing needs of the offender on release;
- where housing needs have been identified, to engage with the SOLO and identified housing provider, sharing relevant information to assist in the assessment of housing



requirements of sex offenders prior to, and at the initial stage of, allocation of accommodation;

- to engage in reviews of accommodation as required by either the housing provider or the Responsible Authorities; and,
- following the prisoner's release, to provide advice and assistance in respect of issues raised during the tenancy.

### Police

54. The Police have a duty to uphold the law by preventing the committing of offences, by preserving order and by protecting life and property. They have risk assessment procedures in place to ensure the safety and wellbeing of any individual who considers themselves to be in a threatening situation. The responsibilities of the Police in relation to registered sex offenders are to maintain an accurate record of those persons in the Police Force area who are required to register with the Police in terms of sex offender legislation; to initiate enquiries where such persons fail to comply with the requirements placed upon them; to participate in the multi agency process established for assessing and managing the risk presented by sex offenders or other potentially dangerous offenders in the community; and to develop, in conjunction with partner agencies, risk management plans for the purpose of monitoring and managing sex offenders. The Police also have a responsibility to keep records on unregistered sex offenders whose current behaviour is of concern.

55. **In relation to accommodation**, the primary role of the Police is:

- to develop with SOLOs protocols for information exchange with housing providers to enable effective risk assessment of both the proposed property and also the community in which it is located. In high risk or high profile cases, it is likely that this process will be supported by a community impact assessment;
- to keep housing providers informed of any behavioural indications that would suggest enhanced risk either to the offender, e.g. through vigilantism, or to the public;
- to collaborate with CJSW and housing providers over whether or not to act on information, e.g. by moving the offender. The Police may, depending on the circumstances of the case, warn the offender of the need to seek alternative accommodation and liaise with the SOLO and housing providers to identify possible alternative accommodation;
- to consult with partners to consider amendments to any pre-existing conditions attached to, for example, probation or supervision orders. Police may engage with partners to ensure that licensing conditions reflect the need for the offender to reside only in accommodation approved by their supervising officer;
- to engage with housing providers over any subsequent moves in and out of housing by the offender, e.g. through decant, transfer, mutual exchange, cross boundary transfers or eviction;
- to ensure that offenders are aware of their obligations under the Sexual Offences Act 2003.

### Scottish Prison Service (SPS)

56. For all prisoners, the SPS is responsible for carrying out risk and needs assessments to assist in determining the management of the prisoner during sentence and in preparation for pre-release planning and release. SPS is also responsible for proactive joint working with the

CJSW supervising officer during sentence and in preparation for release. This process of sentence planning is referred to as “Integrated Case Management” (ICM). A key objective of ICM is to ensure that, along with the Police and CJSW, SPS meets statutory requirements to establish joint arrangements for assessing and managing the risk posed by sex offenders, including the sharing of information.

57. The ICM approach will ensure key agencies are involved at an early stage in resolving any housing issues affecting an offender. This will ensure that these agencies have control over housing accommodation plans, reducing the opportunities for sex offenders in custody to manipulate future arrangements and ensuring that no sex offender leaves prison to a situation of no fixed abode or unauthorised address.

58. **In relation to accommodation**, the primary role of the SPS is:

- to make clear who is the responsible person(s) within the SPS, either nationally or at the local prison level;
- to engage with the Responsible Authorities and housing SOLOs to make suitable arrangements for the housing needs of the offender to be addressed at the earliest stage of the custodial sentence, where there is any indication that accommodation is an issue or potential issue. This means involving SOLOs in initial and subsequent case conferences as part of the ICM process until issues are resolved, ensuring clarity in the timescales involved. This is likely to be required, for example, in the cases of offenders:
  - who cannot return to their home address or home area (in some cases this will be because the Prison Governor will not allow it or because the police, social work and/or housing provider advise against it);
  - who are disowned by their family;
  - who are returning to an area in close proximity to their victims (especially serious cases);
  - whose offence has acquired considerable public notoriety/media attention;
  - who are homeless or have no approved address for temporary home leave or whose home leave address may be outwith Scotland;
  - where there are concerns regarding child protection, domestic abuse or vulnerable adults;
  - who require accommodation with housing support, which is not available;
- to identify, in partnership with CJSW, appropriate accommodation for the prisoner on temporary home leave<sup>5</sup> from custody. The Executive has published separate guidance on home leave for prisoners, “*Integrated Practice Guidance For Staff Involved In The Home Leave Process*”;
- to fund temporary home leave accommodation in accordance with the above practice guidance on home leave.

### NHS (Scotland)

59. Health Boards (including, in some areas, Special Health Boards) have a responsibility to jointly establish arrangements for the assessment and management of risk posed by mentally disordered offenders who are restricted patients. Health Boards or the Special

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<sup>5</sup> Depending on the category of both the prison and the prisoner, home leave can last for either 3 or 7 nights, and generally occurs every 4 weeks

Health Board must undertake risk assessment and develop risk management plans in conjunction with the Police and CJSW. They must notify the Police and CJSW when relevant offenders are discharged following detention under a compulsion order and restriction order. (The Mental Health (Care & Treatment) Act 2003 operational from 1 October 2005, allows Sheriffs to obtain additional information prior to final disposal including a Mental Health Officer report).

60. New regulations introduced under section 96 of the Sexual Offences Act 2003, “The Sexual Offences Act 2003 (Notice of Release or Transfer) (Scotland) Regulations 2007”, will help the police enforce the notification requirements and will strengthen further the measures to ensure that sex offenders who are released into the community do not evade public protection arrangements. They will require those who are responsible for a relevant sex offender while they are imprisoned or detained in a hospital to notify the police of the release of the offender into the community or transfer to another institution. Specifically, the regulations will require responsible persons in prisons and hospitals:

- to inform one another, when transferring a sex offender, that the notification requirements will apply to that offender upon their release; and
- to inform the police of the release of such a sex offender for a period of three days or more (or indefinitely). Such notice should be given 14 days in advance of the release or, if that is not possible, as soon as practicable thereafter.

61. **In relation to accommodation**, Health Boards (and Special Health Boards) must work in partnership, where appropriate, using the Care Programme Approach (or similar) with housing providers and other agencies in providing services for sex offenders.

### **Housing agencies under a duty to co-operate**

62. Housing agencies under a duty to co-operate are local authority housing services and providers and RSLs. Their role is to contribute to the management of risk identified by Responsible Authorities by:

- co-operating with the Responsible Authorities by identifying and providing appropriate accommodation;
- liaising with the Responsible Authorities on the ongoing management and monitoring of the risk of the offender as tenant, including any tenancy moves or evictions;
- having regard to community safety and having in place exit strategies, where a property is no longer suitable and/or the offender’s safety is at risk, or if there are behaviour changes that suggest that the individual poses a risk to the community.

63. The roles and responsibilities of housing providers in relation to housing sex offenders fall into two categories – strategic and operational. The strategic role and responsibilities are outlined below. The operational role will be detailed in the CIH Practice Guidance.

### Strategic role

64. The local authority (including a local authority which has transferred its housing stock to an RSL) is responsible for ensuring the development of a strategic response to the housing of sex offenders. However, in any local authority area there is likely to be a multiplicity of housing providers and local authorities must involve and consult RSLs in their area in

developing their strategic response. This should include an assessment of local need and provision for the range of accommodation for sex offenders and should clarify the contribution by RSLs in their area.

65. It is the responsibility of the local authority to provide an initial single point of contact for accommodation requests from Responsible Authorities. This single point of contact is the SOLO which will provide strategic co-ordination in relation to housing sex offenders within any local authority area. The SOLO role involves:

- identifying the most appropriate housing provider following the risk assessment carried out by the Responsible Authorities
- ensuring that, when an appropriate housing provider has been identified, that the housing provider is included by the Responsible Authorities in the arrangements set out in the Memorandum of Understanding relevant to the identification of appropriate housing and the management of risk
- liaising proactively with Responsible Authorities and housing providers on ongoing risk management and community safety issues

66. Individual housing providers should have in place policies and processes in relation to the housing of sex offenders and the management of risk which are agreed with their governing bodies and conform to the CIH Practice Guidance. They have a responsibility to take part in the development of local protocols for the sharing of information. They should:

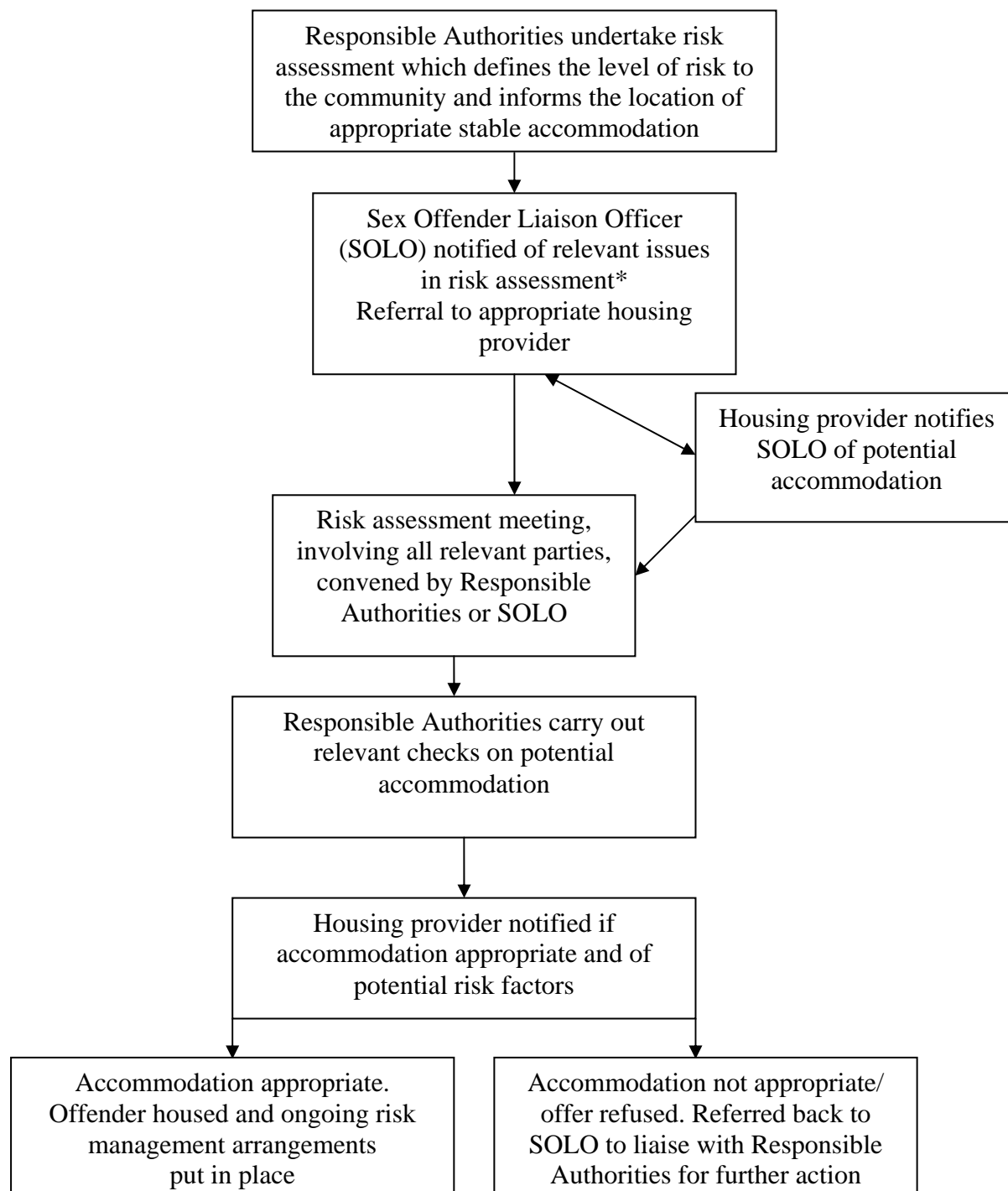
- identify a Link Officer (or officers) to liaise with the SOLO and Responsible Authorities. Where possible there should be more than one Link Officer identified to allow for back up;
- provide information on housing stock and voids to the SOLO at agreed intervals (in accordance with a negotiated agreement);
- respond to specific requests by the SOLO about the availability of housing in relation to the accommodation needs of sex offenders prior to their release from custody;
- have in place processes for responding to requests from the SOLO to house sex offenders;
- assist the assessment of risk by the Responsible Authorities by advising on the suitability of accommodation with regard to location and make up of households;
- keep the SOLO advised of any proposed house moves or house purchases by sex offenders;
- ensure Link Officers take part, where appropriate, in relevant case conferences and multi agency arrangements;
- ensure processes are in place within the organisation to protect staff dealing with the sex offender, for example, in the case of home visits.

67. Housing providers depend on effective information protocols and a co-ordinated approach by Responsible Authorities. Responsible Authorities must therefore ensure that:

- they have effective liaison arrangements in place with the SOLO;
- housing providers receive (through the protocols for information sharing) sufficient information to manage and minimise risk in tenancies occupied by sex offenders;
- they respond effectively to ongoing issues of community safety identified by housing providers.

Figure 1 illustrates the joint process for housing a sex offender on release from prison.

**Figure 1: Housing a sex offender on release from prison**



\* Timescales for responses by all partners - housing providers, SOLO and Responsible Authorities - should be negotiated and agreed. Where complex and difficult offenders are being referred agreed timescales may be altered.

## **MEETING ACCOMMODATION NEEDS**

### **Planning accommodation**

68. When planning to meet the accommodation needs of sex offenders, local authority housing services and CJSW should jointly assess local need and provision for accommodation for sex offenders. Local authorities should not rely solely on social housing to accommodate sex offenders and should adopt a proactive role in planning and enabling the provision of alternative forms of appropriate accommodation. The range of accommodation for sex offenders includes provision from:

- Social rented sector - local authorities, Registered Social Landlords (RSLs) and specialist providers e.g. Sacro - Safeguarding Communities Reducing Offending
- Private rented sector
- Owner-occupied sector

### **Housing Support**

69. Housing support services should also play a key part in helping ex-offenders adjust back to living in their community and in supporting their rehabilitation. The Executive provides around £400m a year to local authorities in Supporting People funding to help a wide range of client groups with their housing support needs. People at risk of offending or re-offending and people leaving prison are among groups eligible for assistance through the local authority Supporting People programme. The Executive also supports offender client groups and the Offender Accommodation Service directly using resources from the Supporting People budget.

### **Appropriateness of accommodation**

70. The risk assessment process undertaken by the Responsible Authorities will inform the house type and location that is considered appropriate to the risk management of the sex offender in the community.

71. It is important for the Responsible Authorities to recognise that there are issues and constraints in providing the most appropriate type and location of accommodation. There is no model of appropriateness, no ideal solution and no ideal location. Housing decisions can only be made on the basis of what housing is, or can be made, available.

72. Responsible Authorities should understand the timescales involved in identifying a property and location and in ensuring that the property is available for let on release of a sex offender from prison. It is crucial, therefore, that they engage with housing providers as early as possible in the risk assessment/management process.

73. If a sex offender is sent to prison, Responsible Authorities should, as soon as possible thereafter, begin the task of planning the offender's accommodation needs on release. If the accommodation on offer from a housing provider is not ideal, Responsible Authorities should adjust the monitoring and supervision arrangements to ensure that any risk is minimised and managed. Responsible Authorities should also be aware that, as a result of demand pressures on the social rented sector and the scarcity of stock in some areas, it may not be reasonable, practical or feasible for housing providers to limit the nature of allocations to houses in the

areas surrounding a sex offender's accommodation. Nor can a housing provider provide any guarantee that existing households adjacent to the identified accommodation will not change.

74. Responsible Authorities must, therefore, keep risk management arrangements under constant review. The risk assessment process needs to determine at the outset the level of ongoing monitoring that is needed in each individual case and this should be included in the risk management plan for the offender. Thereafter, Link Officers within housing providers should ensure that Responsible Authorities routinely receive, on a case by case basis, relevant information on changing household composition in the area. Updates should be supplied in accordance with timescales agreed with Responsible Authorities.

75. Currently sex offenders sentenced to 6 months or more are released on licence until their sentence ends. One of the licence conditions might be that the offender resides only in accommodation approved by their supervising officer. If the accommodation becomes unsuitable because, for example, a vulnerable family moves in nearby or because the victim is rehoused nearby, the supervising officer could require the offender to move on the grounds that they no longer approve the accommodation. If the offender refused to move this could technically be a breach of licence. The offender's behaviour in refusing to move could be a cause for concern and could give rise to use of the police warnings system in relation to disclosure.

76. Similarly, in the case of Schedule 1 offenders subject to statutory supervision on licence, a condition of the licence could be that the offender only resides in accommodation approved by their supervising officer. For those not subject to statutory supervision but required to register with the Police, the police warnings system might be invoked if the sex offender's behaviour was giving cause for concern and the sex offender refused to move.

77. Certain types of accommodation are less appropriate for sex offenders than others:

- The Cosgrove Report did not recommend a specialist residential facility for the treatment of sex offenders because of the risk of networking by offenders. Most experts consider that high profile/high risk offenders are better managed in lower profile accommodation out of the public eye, with access to local programmes.
- Any hostel style accommodation within the mainstream of the social rented sector (as distinct from hostels which are specifically intended for offenders and funded for delivery of CJSW services), poses the risk of bringing together a group of sex offenders in one location. In particular, hostels are not suitable housing for high risk offenders as there are often vulnerable people, including children, in such accommodation who may be placed at risk.
- In some areas, in cases where the sex offender is considered to be of low risk, Bed and Breakfast (B&B) accommodation has been used in the absence of suitable alternative accommodation. But it is imperative that B&B accommodation should not be used to house sex offenders irrespective of the risk level associated with the offender because it is not possible to manage risk in a B&B establishment. If suitable accommodation cannot be found in an area, the Responsible Authorities should examine alternatives in other areas.
- Houses in Multiple Occupation (HMOs) are also generally unsuitable for sex offenders, although HMO accommodation provided by specialist providers such as Sacro may be an exception to this rule.

78. The Executive has put in place regulations that prevent the routine use of “unsuitable” temporary accommodation for homeless households with children and pregnant women (the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2004 - SSI 2004/489). As part of the assessment of whether temporary accommodation is suitable for use, local authorities must assess whether it is “suitable for occupation by children”. The statutory guidance requires that the local authority is satisfied that overall, the accommodation does not pose significant risk to children. If a local authority places a sex offender in temporary accommodation where there are households with children, this could constitute a significant risk to the households with children, or other vulnerable groups, who may also be housed in that accommodation. The main purpose of the Homeless Persons (Unsuitable Accommodation) (Scotland) Order is to prevent children being placed in accommodation that is not safe for them or conducive to their development. Such placements of sex offenders might mean that the accommodation would not meet the standards of the Order.

### **Social rented housing**

79. Sex offenders reside in all housing tenures and there is no presumption that sex offenders on release from prison will be accommodated in the social rented sector. Accommodating sex offenders in local authority or RSL stock is only one housing option amongst others.

80. Not all accommodation for sex offenders will be accessed as a result of referral from the Responsible Authorities. Local authority housing providers and RSLs may also receive direct applications from sex offenders for housing or re-housing. Local authorities may in addition receive homelessness presentations from sex offenders.

81. When making an allocation, housing providers should seek to minimise the risks a sex offender may pose whilst ensuring equality of access to housing is maintained as far as possible. Housing providers must ensure that sex offenders do not receive special housing treatment or unusual housing arrangements unless the interests of public safety require it. This may mean that applications from sex offenders need to be processed separately from other housing applications.

82. It is the practice among some social landlords, to include a voluntary question on housing application forms asking whether an applicant, or anyone associated with the application, is required to register with the police under the Sexual Offences Act 2003. This includes application forms for admission to the housing list (including those used in Common Housing Registers (CHRs) and Choice-Based Letting (CBL)); for requesting a transfer or exchange; and for homelessness presentations. Where the sex offender answers in the affirmative, this triggers protocols for dealing with their housing application. An affirmative answer is not a bar on the sex offender being rehoused. It serves to ensure that any rehousing is subject to effective risk management arrangements by all of the agencies involved. The Executive and the Working Group which advised on the development of the national accommodation strategy considers that there is a strong case for this approach to be applied consistently throughout Scotland. The question would act as a trigger so that that person’s application can be diverted from the general stream of applications and referred to the Sex Offender Liaison Officer (SOLO). The application would then be processed in line with the accommodation strategy.



83. The Scottish Parliament's Justice 2 Committee, in its 2006 review of sex offending against children, also considered the issue of asking such a question on application forms for social rented housing. The Committee recommended in its report published in December 2006 that "*it is made a legal requirement for all application forms for social rented housing to require information on whether the applicant is subject to the notification requirements of the Sexual Offences Act 2003, that it be a criminal offence not to provide this information and, if the person applies as homeless, this question should also be part of the homelessness assessment*". (Recommendation 20) The Executive is currently considering the feasibility of implementing this recommendation and will provide further guidance on this in due course.

84. Critical points relating to allocation rules, routes into housing and the management of housing for sex offenders are set out below. Further coverage of these and other aspects which present risk management challenges will be provided in the CIH Practice Guidance.

#### Allocation rules

85. The allocations rules published by social landlords should make clear that not all sex offenders present a risk to the community and, that, in general, the housing needs of sex offenders will be assessed in accordance with the published rules. But the rules should also make clear that where a risk assessment indicates that a sex offender poses a medium or high risk to the community, then that person's housing needs will be assessed in the light of that risk. Any accommodation offered will be appropriate to that risk both in terms of house type and location and the sex offender will be managed and monitored by the Police and CJSW, as appropriate. Similarly, the rules should make clear that homeless sex offenders will be considered under the homelessness legislation in the same way as other homeless persons, and that sex offenders may need to be treated as homeless if they cannot return to their home because it is unreasonable to occupy, either because of risk to the sex offender or to the wider public or because of proximity to the victim.

86. Social landlords must also ensure that all tenants are treated equally irrespective of their sex, marital status, age, race, ethnic origin, sexual orientation, disability or religion. Section 106 of the Housing (Scotland) Act 2001 states that:

- Scottish Ministers and local authorities must exercise their functions under the Act in a manner, which encourages equal opportunities and in particular the observance of the equal opportunity requirements; and
- in providing housing accommodation and related services, Registered Social Landlords must act in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.

87. The performance of social landlords in equalities issues is routinely inspected by Communities Scotland in the course of all of its inspection work, including in any themed inspections (as described at paragraph 119). In 2006, Communities Scotland published its second thematic study on Scottish social landlords' performance in equalities.

88. Councillors have a role to play in helping to raise public awareness of the facts about sex offending and the housing of sex offenders and in allaying the fears of the community. They also have a role to play in bringing the concerns of the local community to the local authority. But Councillors are excluded from decisions on certain allocations by virtue of section 20 (3) of the 1987 Act as inserted by section 154 of the Leasehold Reform, Housing

and Urban Development Act 1993. Section 20(3) of the 1987 Act excludes the local councillor from a decision on allocating a council house where the house in question is situated, or the applicant for the house in question resides, in the electoral division or ward for which that member is elected. This does not prevent councillors from making factual information known to the Council or from making representations to the Council on behalf of a constituent.

89. Management committees of registered social landlords (RSLs) in Scotland comprise, in the main, members of the community. In general, management committee members decide on the allocations policy and should monitor general outcomes of that policy. Management committees should have no involvement in discussions or decisions about individual allocations, which should remain the responsibility of officers of the RSL. This applies also to the housing of sex offenders.

### Routes into housing

90. It is important that the Responsible Authorities are aware that there are various routes in to (and out of) social rented housing, as follows:

- Referral
  - by Responsible Authorities through SOLO to housing providers
  - by Responsible Authorities to specialist provider e.g. Sacro
  - by local authority homelessness function to RSLs (section 5 referrals<sup>6</sup>)
- Homelessness
  - homelessness presentations to a local authority
  - referral of a homelessness presentation by one local authority to another local authority (out of area placements)
- Direct Application
  - local authority and RSL Housing Lists
  - Common Housing Registers (CHRs)
  - Choice-Based Letting (CBL) schemes
  - nominations by local authority to RSL
- Transfer
  - mobility Moves – across the UK
  - transfers or management moves– within a local authority area
  - cross boundary transfers – between local authority areas
  - mutual Exchanges – between tenants with the approval of landlord(s)

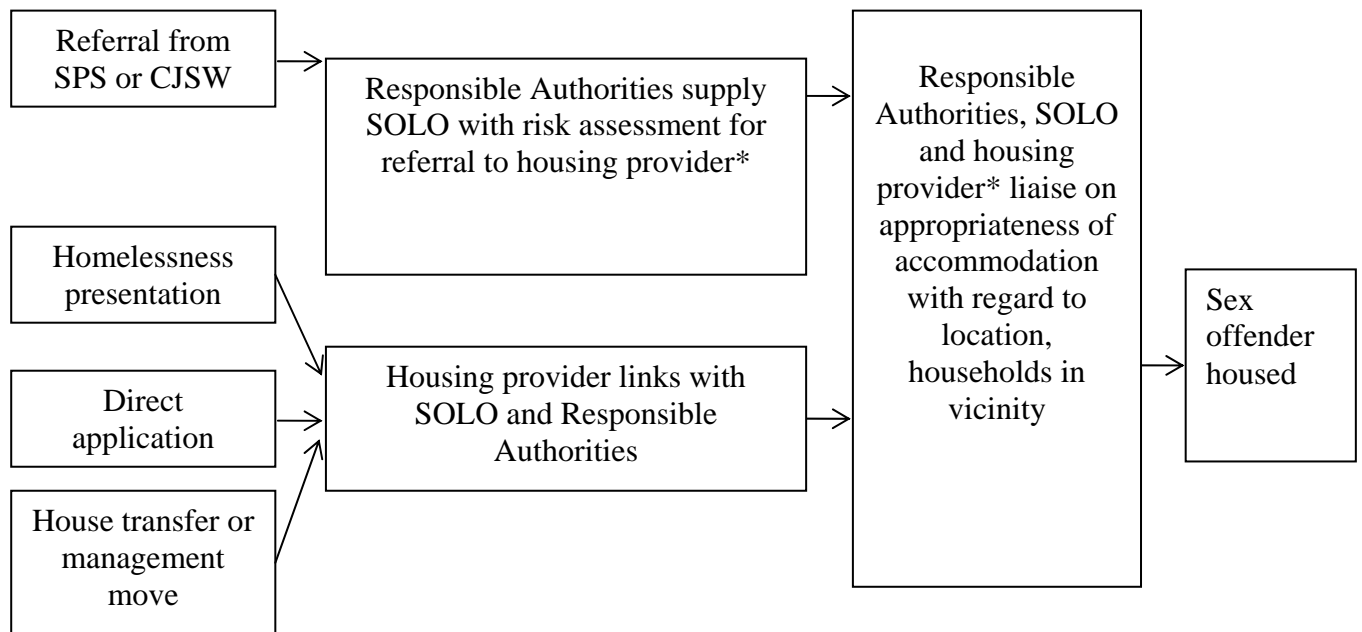
91. Some sex offenders will not be looking for accommodation but will simply move in with friends or family. It is for the Responsible Authorities to manage any risk associated with such arrangements and to keep SOLOs informed of the whereabouts of such persons.

92. As illustrated in **Figure 2**, all routes into housing are relevant provided the outcome is achieved where the offender is accommodated in stable accommodation and arrangements for ongoing risk management are in place.

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<sup>6</sup> Section 5 of the Housing (Scotland) Act 2001 requires RSLs to comply with a local authority's request to provide accommodation for homeless applicants unless there is a 'good reason' not to do so

**Figure 2: Routes into social housing**



\* includes specialist housing providers such as Sacro

### *Referral*

93. In general, SOLOs should expect to arrange accommodation following referral from SPS or CJSW. This will enable a sex offender's housing needs to be met before release from prison, thus avoiding any necessity for a sex offender to present as an applicant for accommodation through other routes.

94. It is open to local authorities to process referrals as homelessness applications, including use of referrals to RSLs under section 5 of the Housing (Scotland) Act 2001. However, they should arrange to do this before the offender is released so that accommodation is available for the offender on release. The SOLO should be involved in all cases. The Responsible Authorities should be planning for the offender's release well in advance of the release date and should have accommodation available, including temporary dispersed accommodation where appropriate, either within their own areas or accessible through reciprocal cross-boundary arrangements. In some cases, it may be appropriate to hold open the tenancy of a sex offender who has received a short sentence, provided the property remains suitable for them following a risk assessment. The agencies involved will, in reaching a suitable accommodation solution, be required to take account of any cost and community implications arising from holding property vacant in advance of release.

### *Homelessness*

#### *-Presentation to local authority*

95. Local authorities should recognise that applications from homeless sex offenders should be treated as a priority given the increased risks associated with the lack of a stable environment to facilitate effective monitoring and management.

96. Homelessness officers in local authorities should engage SOLOs when they receive homelessness presentations from sex offenders so that Responsible Authorities can be consulted on risk assessment and appropriate types of accommodation. Particular care should be exercised when placing homeless sex offenders in temporary accommodation, since certain types of temporary accommodation are by nature inappropriate for sex offenders whereas other types of temporary accommodation, such as dispersed flats, may be entirely appropriate.

#### *-Out of area placements*

97. In those cases where the local authority may need to consider placing a homeless sex offender in another local authority's area, the responsibility for making the necessary arrangements for that placement should lie with the placing local authority. Out of area placements may be appropriate for a sex offender where, for example:

- such a placement would provide appropriate accommodation which is not currently available in the placing local authority's area;
- the sex offender or others might be at risk if the sex offender was to be housed in the placing local authority's area;
- a Prison Governor has designated, on the basis of a social enquiry report on a sex offender, a specific local authority to be the accommodating authority.

98. Out of area placements present a potentially complex set of challenges. When considering an out of area placement, it is crucial that the placing local authority discusses and agrees the placement with the local authority in whose area the sex offender is placed and that SOLOs in both local authorities are involved. This discussion between the local authorities involved should include the identification of any risk involved as well as identification of a plan to manage that risk. It is imperative that parties to any decision include the Police and CJSW. Furthermore, all should be in agreement on how such a plan should be implemented before any placement proceeds.

99. Under no circumstances should a sex offender (or other violent offender) be placed in another local authority's area without the knowledge and consent of that authority and without a plan in place to manage any associated risk. To do so would be to put others at risk particularly if other homeless households, which may include children or other vulnerable people, are accommodated by the receiving landlord in the same temporary accommodation as the sex offender.

100. Local authorities should therefore establish and operate protocols to ensure that no out of area placements of sex offenders take place without the knowledge and agreement of the receiving local authority. Glasgow City Council has established such a protocol and this may provide a model for similar application in other areas. Local authorities should also ensure monitoring arrangements are in place to track the incidence of out of area placements. These arrangements will require to show that where a local authority has placed a sex offender (or other violent offender) in another local authority area, proper discussion between the relevant local authorities has taken place and agreement has been reached. These monitoring arrangements are critical and will be subject to scrutiny in future inspections by regulators. Where the sex offender is under supervision, the transfer of supervision of that sex offender must be discussed and agreed with the relevant CJSW service.

#### *Direct application*

101. Sex offenders may apply for housing direct by putting their name on a housing list. This is a list of applicants for social housing kept by local authorities and RSLs or established jointly between a local authority and some or all RSLs in any specific area.

102. The Housing (Scotland) Act 2001 introduced a new right for everyone aged 16 or over, who is not excluded by other legislation, to register on any housing list, including any combined housing list operating as a Common Housing Register for access to all social sector housing in an area. This new right is designed to ensure that all prospective tenants are treated fairly and consistently, and to promote the highest possible standards in allocation policies and procedures. Social landlords cannot, therefore, ban sex offenders from their housing lists.

103. Housing providers may have different processes and procedures to allocate houses e.g. Choice-Based Letting where landlords ask applicants to 'bid' for vacant properties. Where an applicant has declared on an application form that he or she is a registered sex offender, this should alert housing providers to the fact that an application has been received from a sex offender. This allows housing providers to contact the SOLO, who can then consult Responsible Authorities on the appropriateness of any let identified by the applicant or the provider before a formal offer of housing is made.

### *Transfer*

104. Sex offenders who currently hold a tenancy in the social rented sector may apply for a housing transfer within or outwith the local authority area. As Scottish secure tenants, sex offenders also possess the right to exchange. This may take the form of a Mutual Exchange with another Scottish secure tenant or a mobility move outwith Scotland. Housing providers may also need to move or decant sex offenders to alternative housing under a management initiated move.

105. Housing providers should, on receipt of a transfer or exchange application from a sex offender, contact the SOLO who should consult the Responsible Authorities (principally Police and CJSW) before an alternative property is allocated, or a bid is permitted under a CBL scheme, or consent is given to an exchange. A housing provider should restrict choice of alternative housing or withhold consent for a particular exchange, if consultation with Responsible Authorities suggests that it is reasonable to do so in the interests of public safety.

106. Responsible Authorities should also be consulted in situations where a housing provider needs to arrange a management move for a sex offender (for example, where current accommodation is liable for demolition). Housing providers and SOLOs should continue to work closely with Responsible Authorities to ensure that risk assessments are carried out whenever a change of house is contemplated and to ensure ongoing risk management.

### Tenancy management: on-going risk management of offender as tenant

107. Once an offender has been housed, Responsible Authorities (principally Police and CJSW) and housing providers must continue to work together in order to remain up to date with any developments in an individual's case, and in order to keep all other agencies up to date with any housing-related issues that may arise. The rehabilitation of a sex offender is not a static situation and is subject to unexpected change, throwing up new and unanticipated problems that must be assessed and managed. New risk management requirements will arise from housing management issues, as tenants exercise their rights. Risk management issues will also arise if landlords require to evict sex offenders.

### *Tenancy rights*

108. Sex offenders with permanent accommodation in the social rented sector will be Scottish secure tenants with all the rights that such tenancies entail. In addition to the right to exchange, such tenants possess:

- Right to a joint tenancy
- Right to assign/sublet
- Right to succession
- Right to buy

109. Under the Housing (Scotland) Act 2001, the rights to a joint tenancy or to assign or sublet a tenancy in the social rented sector are subject to the approval of the landlord which must not be unreasonably withheld. Housing providers who receive an application from a sex offender wishing to exercise one or other of these rights should consult the Responsible Authorities before giving consent.

### *Eviction*

110. The eviction of sex offenders is particularly problematic since this can lead to the displacement and heightening of risk, through offenders being lost from the system or not finishing rehabilitation programmes. Eviction of a tenant on conviction of a sex offence should not be a matter of course, but the housing provider should take into account both the individual's circumstances and wider community safety considerations. Responsible Authorities should be consulted via the SOLO if eviction is being contemplated so that they can consider the risk implications and advise the housing provider. In the event that eviction is necessary, the Responsible Authorities will require early notification to make plans for the future accommodation arrangements for that offender. It is crucial, in terms of risk management, to avoid a sex offender simply being evicted and lost to the system.

111. SOLOs should be aware that section 11 of the Homelessness Act 2003 gives a duty to all landlords apart from local authorities to inform the local authority of notices of proceedings of possession. Whilst section 11 does not give a duty to local authorities themselves they will want to ensure that any planned evictions of sex offenders are notified effectively within their organisations and to SOLOs.

### **Specialist housing providers**

112. Where a local authority or RSL leases a property to a specialist provider such as Sacro for the housing of sex offenders, the local authority or RSL should agree protocols with the specialist provider covering information sharing and any special or particular arrangements for managing the tenancy. Requests for accommodation made to a specialist agency such as Sacro should be made at an early stage to provide adequate time for the sharing of appropriate information by the SOLO or Link Officer.

### **Private rented sector**

113. Offenders in the private rented sector are subject to the same risk assessments and risk management as sex offenders in the social sector. This will be mainly the responsibility of the Police particularly in relation to the risk management implications of any moves by offenders residing in the private rented sector, including those that may arise from evictions. CJSW will also be involved where the sex offender is subject to supervision. Local authority housing services should be involved through the SOLO if there is any threat to the accommodation and alternative provision is required.

114. A number of local authorities arrange to lease properties from private sector landlords in order to sub-let them to people in housing need. The local authority itself takes responsibility for appropriate and effective management of these tenancies. Such private sector leasing arrangements could be a useful option to be considered by the SOLO when Responsible Authorities are seeking accommodation for a sex offender leaving prison.

115. The registration of all private sector landlords under Part 8 of the Antisocial Behaviour etc. (Scotland) Act 2004 will provide local authorities with comprehensive information on the scale and distribution of the private rented sector for the first time. Registration also establishes contact between local authorities and private landlords in their areas. This offers greater scope for authorities to approach private landlords with the offer of

managing a tenancy under a private sector leasing arrangement for the duration of an offender's stay, or on a longer term basis. Where the local authority manages the tenancy, it should not be necessary for the private landlord concerned to be given information about the tenant.

### **Owner-occupied sector**

116. Sex offenders who are owner-occupiers present particular challenges in relation to risk assessment and ongoing risk management. The key responsibility for risk management in relation to owner-occupiers lies with the police. CJSW will also be involved where the sex offender is subject to supervision. However, owner-occupiers, particularly in multi-tenure estates, will often reside near or within tenanted stock and the Police and CJSW must involve housing providers in address and block profiling and the provision of relevant and regular information to ensure that other householders and their children are protected.

## **SUPPORTING AND MONITORING DELIVERY**

### **Practice Guidance**

117. To support delivery of the strategy, new Practice Guidance on the Housing of Sex Offenders is being produced by the Chartered Institute of Housing in Scotland (CIH) working with the Executive and key stakeholders including COSLA and the SFHA. The guidance replaces the 1999 CIH Practice Note "Housing and Sex Offenders in Scotland" and is designed to give clear practical direction to local authority housing services and RSLs in how they should engage with the housing of sex offenders in the community. It is also relevant to those agencies and organisations with which housing organisations need to work in delivering the strategy.

118. The Executive is providing support to the CIH to enable it to deliver a programme of education and training to raise awareness of the strategy and guidance and to promote their effective implementation. In line with the recommendations of the Cosgrove Report and recent research, training will be conducted, wherever possible, on a joint cross-agency basis, to build shared understanding and effective communication between agencies.

### **Regulation and inspection**

119. Communities Scotland, as the regulating body for the social housing sector in Scotland, will play a key role through its inspection framework in reinforcing effective delivery of the strategy and compliance with practice guidance. Communities Scotland will determine, in discussion with other inspectorates, the most effective way to review performance in the housing of offenders. This may take the form of thematic inspections, possibly commencing in 2007/8. Thematic inspections involve selecting a particular theme, client group or geographical area and inspecting a number of organisations on the same themed area, possibly in conjunction with other inspectorates. All of Communities Scotland's inspection reports are published and are available to all other relevant inspectorates and Community Justice Authorities.



## **Monitoring and review**

120. The multi-agency Working Group, which has advised the Executive on the development of this strategy, will remain in place throughout 2007 to review and address any issues that may arise from the introduction and operation of the strategy. This will include monitoring of the strategy's interface with the wider reforms for managing sex offenders under the Management of Offenders etc. (Scotland) Act 2005. The Group will agree a monitoring framework for this purpose following the training of agencies and practitioners and receipt of feedback on the strategy.

## **Further Work**

121. In order to ensure that the risks are managed between and across the youth and criminal justice systems, further consideration is being given to the arrangements that need to be in place in respect of those young people who are considered to be sexually aggressive and present a risk to others, and whose offending has been dealt with in the Children's Hearings system, rather than through conviction in the Courts. The Executive will consult shortly with the relevant stakeholders on how to ensure that appropriate management and accommodation arrangements include offenders whose offending has been dealt with through the Children's Hearing system.

## **MANAGING EXPECTATIONS**

122. Communities have very strong concerns about sex offenders and rightly have correspondingly high expectations that public agencies will put effective arrangements in place for their supervision. Managing these expectations is an essential part of overall risk management and should not be regarded by any agency as a peripheral or secondary concern.

## **Disclosure**

123. The nature of media reporting of sex offending can have the effect of intensifying community fears and raising community expectations. A disproportionate focus on the figure of the predatory paedophile often provokes demands for public disclosure of the identity and whereabouts of sex offenders, placing social housing providers at centre stage. The Cosgrove Report and the Irving Report<sup>7</sup> did not however support a policy of widespread public notification. Evidence suggests that such action may bring serious consequences of its own. It also increases the likelihood that the sex offender in question will go underground and withdraw from educational or rehabilitative programmes, and that contact with the Police and CJSW will be lost, to the overall detriment of ongoing risk management, and, ultimately, public safety.

124. The Irving Report recommended a case-by-case approach to disclosure based around a police warnings scheme. This recommendation has been accepted. This means that where an individual continues to ignore warnings from the police about their behaviour, information on their background or whereabouts may be given to a relevant third party - for example, a householder, an employer or a leisure centre manager. The new warnings system places the

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<sup>7</sup> *Registering the Risk: Review of Notification Requirements, Risk Assessment and Risk Management of Sex Offenders*, Professor George Irving (July 2005)

onus on sex offenders to abide by the law and any police warnings about their activities, or face losing their anonymity.

### **A multi-agency approach to communication**

125. While reports in the media tend to raise public anxiety, they tend not to raise genuine awareness of the actual risks posed by sex offenders to the community. Responsible Authorities and other agencies, including social housing providers, should adopt clear and transparent communications strategies which, in contrast, seek to raise awareness without raising anxiety. It is vital that all of the relevant agencies are able to demonstrate and to provide reassurance that they are working together and have robust, consistent systems in place to minimise risk.

126. At the same time, it is important for the public to realise that risk cannot be eliminated, particularly given that not all sex offenders are known to statutory agencies. Communities and individuals therefore need to be made aware of steps they should take themselves in the interests of public and personal safety. The Executive is considering how best to provide national support to the work of the statutory agencies through increasing public awareness of the steps taken to manage risks.

### **Role of Responsible Authorities**

127. As part of a multi-agency approach to communication, Responsible Authorities should:

- designate a senior member of staff as a community or media spokesperson to whom all routine and emergency enquiries or concerns can be referred;
- undertake to notify the relevant SOLO and housing provider of any incident caused by one of their tenants or likely to affect other tenants in neighbouring properties;
- prepare a joint media release in cases where there is an incident in respect of a sex offender (or suspected sex offender) in private housing;
- engage the SOLO and housing providers more widely in managing community expectations.

### **Role of housing agencies**

128. The local housing office is often the first port of call for tenants or community members who wish to report concerns about sex offenders. Their position at the heart of communities makes housing providers ideally placed to alert the Police and CJSW to concerns and to assist in managing community expectations. It is therefore essential that housing agencies are both:

- responsive to community concerns and expectations, routinely and in the event of an emergency;
- pro-active in their attempts to involve, educate and communicate with those communities in order to reduce anxieties and the potential for vigilantism.

129. Housing agencies should accordingly:

- be open and transparent about the organisation's protocols for housing sex offenders;

- transmit the key messages that there is no typical sex offender; that risk can stem from all sections of society; that sex offending takes place across all tenures - social rented, private rented and owner-occupied; that not all sex offenders pose a risk to the wider community or to children; and, most importantly, that the risk posed by sex offenders can be minimised through effective joint working amongst Responsible Authorities and housing agencies;
- designate a senior member of staff as a community or media spokesperson who will liaise with Police and CJSW on all routine and emergency enquiries or concerns and agree appropriate responses;
- co-ordinate joint press releases with Police and CJSW where a tenant is involved in any incident reported in the media;
- ensure that all staff are aware that concerns raised by the media or by members of the public should be directed to the designated officer;
- ensure a written confidentiality policy is in place with which all staff are familiar and that sensitive information is stored, flagged and managed in line with that policy;
- facilitate access to awareness raising sessions on the housing of sex offenders for front-line staff, and elected members;
- ensure access to joint training of SOLOs and Link Officers with their equivalents in the Responsible Authorities.

**Scottish Executive**  
**March 2007**



**CHECKLIST OF RELEVANT INFORMATION FOR SEX OFFENDER LIAISON OFFICER (SOLO) AND HOUSING PROVIDER LINK OFFICERS**

The relevant information for housing providers is appropriate for all cases. All local Information sharing protocols developed between responsible authorities and housing providers should contain the standard items identified below. Headings for relevant information may be added to in individual cases and protocols may be adapted to suit local circumstances.

The principles of information sharing protocols with housing providers are based on the recommendations of the Duty to Co-operate multi -agency working group and is part of the MAPPA Guidance. Any assessed risk should trigger the involvement of SOLO and housing providers.

<b>Contacts for SOLO (as appropriate)</b>	
Level 2 MAPPA Co-ordinator	NHS
RSL Link Officer	SPS
Lead Agency contact	Homeless Team
Police	Support provider
CJSW	
<b>Groups at Risk from Offender</b>	
Individuals and groups at risk of harm from offender	
Assessed level of Risk (as per RM 2000)	
Identified factors likely to escalate risk	
Regularity of ongoing area scanning (by housing provider in conjunction with SOLO)	
Risk to staff and arrangements for visiting in home and office	

**Key elements of the risk management plan (for example)**

Timescales for provision of support

Support package details

Local family/ friends supports

Arrangements for ongoing monitoring  
Arrangements for ongoing supervision

Inappropriate areas for housing

**Media Handling Arrangements**

High Profile offender yes/ no

Exit strategy

Agreed arrangements for responding to media enquiries

## Part 7

### Information Sharing and Multi Agency Approaches

#### Background

1. In 2001, an Expert Panel, chaired by Lady Cosgrove, published a report entitled “Reducing the Risk: Improving the Response to Sex Offending”. The Panel recognised that a large number of agencies, including the police, prosecutors, courts, prison service, criminal justice social work, as well as housing, health and education authorities play a role in managing the risk posed by sex offenders. The Panel concluded that these agencies (working with voluntary sector partners) have a duty to deliver the safer environment which communities expect and deserve but that there is a tendency for individual agencies to focus their attention on improving their internal procedures. This results in gaps in the system which sex offenders can exploit.

2. The Panel therefore called for a programme of action where:

- Each organisation has a clear understanding of its own role and responsibilities in relation to sex offenders.
- Agencies and organisations who work with sex offenders work together to overcome the risks which sex offenders present.
- Institutional barriers which prevent a more effective co-ordination of practices and integration of services are tackled, and
- The practical and operational difficulties which exist are addressed.

In particular, the Expert Panel highlighted the importance of sharing information.

#### National Concordat on Sharing Information on Sex Offenders

3. In order to fulfil the aspirations of the Expert Panel report, the Solicitor General for Scotland convened the multi agency Information Sharing Steering Group to take forward the recommendations of the report on Information Management and to ensure the effective and efficient flow of information between key agencies involved in the management of sex offenders by developing protocols, guidance and strategies. As a result the *National Concordat on the Sharing of Information on Sex Offenders* was developed and published. In signing the Concordat, agencies from all spectrums of the justice system and statutory and non statutory organisations involved in the management of sex offenders agreed to work to a set of principles and working arrangements to improve the systems and procedures to ensure that public safety is given the highest priority through ensuring that all relevant information is shared within the tenet of existing legislation. These agencies and bodies etc include the responsible authorities and many who will be defined under the duty to co-operate.

## **Protocols**

4. Importantly, the Concordat requires all agencies involved to use agreed definitions and to develop detailed information sharing protocols under which the flow of information is to be managed. Protocols will allow each agency to be clear about and address their legal obligations for sharing of information under the Data Protection Act 1998 and other legislation. Guidance on the development and content of protocols is covered later in this part of the guidance. It should be recognised that most agencies will require to be involved in the development and operation of bi-lateral and multi-lateral protocols. Protocols will be a major factor in the duty to co-operate and should be developed as part of the Memorandum under section 10(5) of the Management of offenders etc (Scotland) Act.

## **Communication, record keeping and action**

5. The effective management of offenders who pose a risk of harm to the community requires a set of complex arrangements to be put in place by a number of agencies to address individual needs, circumstances and most of all to ensure public protection is maintained. Investigations into high profile cases have previously identified poor communication and lack of continuity as major factors in contributing to the failure to properly assess risk and develop management plans, at an early stage and to monitor and address changes in risk and adjust management of the offender, as required.

6. The Concordat, protocols and Memorandum are intended to provide the basis on which each agency will agree to fulfil its role. These roles will only be delivered effectively if clear lines of communication are established between the responsible authority and duty to co-operate agencies.

7. Whilst the development of the Concordat and guidance on protocols were aimed at developing a framework for the sharing of relevant information on sex offenders it should be noted that the same principles will apply when the same provisions of the Management of Offenders (Scotland) Act 2005 are introduced for violent offenders. The purpose of this part of the Guidance is to give further advice about information sharing which is a potentially sensitive issue for responsible authorities and agencies involved under the duty to co-operate. As with much of the Guidance, this further advice does not seek to prescribe how all cases involving information sharing will be dealt with. Whether information should be shared and, if so, what information and to whom, must be decided on a case-by-case basis. But the presumption should be that in cases where there is a risk of harm to the public, information should be shared.

8. Confident, appropriate and effective sharing of information is a very important part of the duty to co-operate. The effectiveness of the information sharing arrangements will reflect the effectiveness of co-operation within the MAPPA as a whole. However, not all the information shared will be personal information, that is the information covered by privacy laws (the common law duty of confidentiality, the protection of personal information required by the Data Protection Act and Article 8 of the European Convention of Human Rights). This part of the Guidance relates only to sharing personal information.



9. Information sharing is not an end in itself and it is more than a protocol about how information and what information will be shared, important though those are. The use to which the information shared can be put and the interpretation of its significance is ultimately what is of greatest value. That interpretation or analysis will form the basis of risk assessment and the foundation of the plans to manage risk. The duty to co-operate should not only enable better sharing of information but better interpretation and analysis too. The duty to cooperate will enable different professional insights to be brought to bear, which can make the assessment and understanding of risk more accurate and more complete.

10. In establishing the duty to co-operate, the emphasis must be placed as much upon the interpretative and analytical skills co-operation can bring, not just the mechanisms for sharing information, very important though they are.

11. The Data Protection Act 1998 requires that personal information:

- is obtained and processed fairly and lawfully;
- is only disclosed (shared) in appropriate circumstances;
- is accurate, relevant and not held any longer than necessary; and
- is kept securely.

12. Critical to the justification of information sharing are the twin requirements of necessity and proportionality. The necessity criterion requires that there is a pressing public protection need. The proportionality criterion requires the information shared must be only that information necessary to achieve the purpose for which it is being shared. Further explanation of this is provided below.

13. To reiterate, sharing information is not an end in itself. To identify the purpose of sharing information and to ensure that the agencies' obligations to retain and use the information lawfully are fulfilled, it is helpful to keep the following in mind. The persons with whom information is shared must know:

- why they have been given it: i.e. the purpose for which the information has been given must be connected either to that person's authority and role as a representative of the duty to co-operate agency; or as someone to whom disclosure is justified because of the exceptional risks posed to them by the offender;
- that it must remain confidential, be kept safely and retained only for as long as necessary; and
- what they are expected to do with that information.

14. Clarity about these matters will help instil the confidence of the professionals representing the duty to co-operate agencies.

### **Data Sharing Protocols**

15. Sections 10 and 11 of the Management of Offenders etc (Scotland) Act 2005 provides the statutory functions and duties within which agencies will establish arrangements and co-operate in the implementation of these arrangements. The requirements under the duty to co-operate, the development of the Memorandum of Understanding, the Concordat on the Sharing of Information and the development of Protocols are intended to provide the framework within which the MAPPA arrangements will operate.

16. The previous sections have set out the background to the introduction of the Concordat on Sharing Information, the introduction of the guidance on the development of protocols and, in broad terms, the importance within the law and significance of sharing relevant information.

17. The next section replicates in full the guidance (Scottish Executive Justice Department **Circular 15/2005**) issued in November 2005 to those agencies and bodies who signed the Concordat. The guidance itself also covers agencies that are not involved directly in the MAPPAs arrangements. However, it should be applied by the responsible authorities and duty to co-operate agencies when developing the protocols for the arrangements under the MAPPAs. Responsible authorities and duty to co-operate agencies will nevertheless also wish to ensure that they have information sharing protocols in place with those agencies not directly involved in the MAPPAs e.g. Scottish Court Service, Crown Office and Procurator Fiscal Service.

## **JD CIRCULAR 15/2005 SHARING INFORMATION ABOUT SEX OFFENDERS**

### **Guidance on the Development of Data Sharing Protocols**

#### **PURPOSE OF THIS DOCUMENT**

1. Data sharing is at the heart of measures to protect the public from the risks posed by sex offenders. Each of the agencies involved in the management of sex offenders has signed a national Concordat, the basis of which is a clear commitment to share all relevant information, and to ensure that this is done in accordance with the law, and respecting the human rights of both victims and offenders. For the Concordat to be effective, and for the presumption of data sharing to be realised, this process must be managed in a way which is consistent, accurate and lawful. The signatories to the Concordat have agreed that the best way to ensure this is for each data transfer to be managed using a “Data Sharing Protocol”, in effect, a detailed agreement between two or more agencies setting out the information which can be shared, and how this will be managed in practice.

2. The purpose of this document is to provide guidance on the development of such Data Sharing Protocols. The Guidance is relevant to all agencies involved in the management of sex offenders (at all stages).

#### **WHAT THE GUIDANCE CONTAINS**

3. The Guidance is split into a number of sections. Each covers a specific aspect of the development and management of a data sharing protocol. The main text of the Guidance addresses the following questions:

- Why is it necessary to share information about sex offenders?
- What is a data sharing protocol and why is it necessary?
- Which agencies should be involved in data sharing protocols?
- How should a data sharing protocol be developed?
- How should a data sharing protocol be managed?
- What should a data sharing protocol cover?

The Guidance will cover each of these areas in turn.

4. This Guidance relates specifically to the development of **data sharing protocols**. One of the key issues underpinning data sharing is ensuring that the data collection, management and sharing processes themselves are both lawful and appropriate. There is a great deal of detailed guidance already available about the often complex legal and policy issues involved in sharing information. For that reason, this Guidance will make only brief reference to issues such as the implications of the Data Protection Act and Human Rights Act, confidentiality and the technical aspects of managing sensitive personal data. Annex 1 provides a summary of the main guidance available on these issues.

## WHY IS IT NECESSARY TO SHARE INFORMATION ABOUT SEX OFFENDERS?

5. In 2001, an Expert Panel, chaired by Lady Cosgrove, published a report entitled “Reducing the Risk: Improving the Response to Sex Offending”. The Panel recognised that a large number of agencies, including the police, prosecutors, courts, prison service, criminal justice social work, as well as housing, health and education authorities play a role in managing the risk posed by sex offenders. The Panel concluded that these agencies (working with voluntary sector partners) have a duty to deliver the safer environment which communities expect and deserve but that there is a tendency for individual agencies to focus their attention on improving their internal procedures. This results in gaps in the system which sex offenders can exploit.

6. The Panel therefore called for a programme of action where:

- Agencies and organisations who work with sex offenders work together to overcome the risks which sex offenders present.
- Each organisation has a clear understanding of its own role and responsibilities in relation to sex offenders.
- Institutional barriers which prevent a more effective co-ordination of practices and integration of services are tackled, and
- The practical and operational difficulties which exist are addressed.

7. In 2003, the Solicitor General convened an Inter-Departmental Steering Group (ISSG) with the following remit:

- To ensure the efficient and effective flow of information between the key agencies involved in the management of sex offenders by developing protocols, guidance and strategies. These will address where necessary, issues of confidentiality and data protection in a way which underpins the improved multi-agency arrangements endorsed by the report of the Expert Panel on Sex Offending "reducing the risk".
- To achieve agreement of the relevant agencies on the group to implementation of its work through appropriate consultation.

8. ISSG met on a number of occasions between 2003 and 2005 and considered each of the recommendations relating to information sharing made by the Expert Group. This Guidance is a direct response to Recommendation 64, which states:

*“Protocols to provide a framework for information sharing and joint working should be developed. These should draw on the best examples of current good practice and should be kept under review to ensure that they do not degrade and become less useful over time. The development of these protocols should involve liaison with relevant voluntary organisations.”*

9. Since 2001, a number of bilateral and multi-lateral data sharing protocols have been developed to manage the flow of information between agencies involved in the criminal justice process. These protocols, however, cover only some areas, and generally only some agencies in each area. It is important that the right information is available at the right time to enable all agencies to assess and manage risk effectively and to protect the public.

Data sharing in relation to sex offenders is central to public protection. Data can be shared for a wide range of reasons, some of which are summarised below:

- For the prevention, detection and reporting of crime.
- For the prosecution of offenders.
- To inform the court about possible sentences.
- To assess the risks and needs of prisoners.
- To facilitate rehabilitation or treatment both in prison and in the community.
- To determine an offender's suitability for parole.
- To assess and manage risk.
- To develop management plans for offenders to ensure the safety of the community.
- To protect children.
- To protect offenders.
- To track offenders.
- For research, monitoring and statistical purposes.

### **The National Concordat**

10. All of the agencies involved in the management of sex offenders have signed a national agreement, known as the National Concordat. The basis of the Concordat is that each of the agencies involved has agreed to share relevant information about sex offenders and sex offending. There is a *presumption* that data will be shared unless there is a good reason, usually a legal reason, why it cannot be shared. This national agreement also covers all local data sharing arrangements and all local protocols (including bi- or multi-lateral protocols between national agencies) should take the National Concordat as their starting point.

11. The agencies represented on the ISSG and which have signed this Concordat have, therefore, come together to agree a set of principles and working arrangements which will improve their systems and procedures to ensure that public safety is given the highest level of priority through ensuring that **all** relevant information is shared. This Guidance provides assistance to agencies in implementing both national and local data sharing protocols. The ISSG also agreed a set of standards to support data sharing (Annex 2) and a set of definitions to be used by agencies which signed the Concordat (Annex 3)

### **WHAT IS A DATA SHARING PROTOCOL?**

12. The Expert Panel was clear in its view, endorsed by ISSG, that to be fully effective, data sharing must be placed on a formal, agreed footing. A "Data Sharing Protocol" is the term agreed by ISSG to describe such a formal agreement between two or more agencies to share information, in this case about sex offenders. The protocol sets the basis of that agreement, and the procedures associated with it. A protocol should cover, as a minimum, four main areas:

- A clear statement of which agencies are involved in the agreement.
- A clear statement of the data which is covered by the agreement.
- A clear statement of the procedures by the sharing of information is managed, including reference to any pre-existing agreement, for example on data standards.

- A clear statement of how the protocol will be managed, including arrangements for its regular review.

Each of these issues is covered in a separate section below.

13. Protocols can also cover a range of other issues depending on the needs of the agencies involved, for example:

- Background information about the agencies involved.
- Background information about the development of the protocol.
- Explanatory information about sex offenders and sex offending.
- Explanatory information about the need to share information.

### **Types of Protocol**

14. Although this Guidance (in common with most guidance on data sharing) talks in terms of “Data Sharing Protocols”, in reality, these can take a variety of forms. Their common factors are that they encompass two or more agencies, and they manage the flow of information about sex offenders. Beyond this, there can be a range of variations, for example:

- An agreement between two or more national agencies (best described as a “bi-lateral protocol”).
- An agreement between two or more local agencies, generally with reference to a national agreement (similarly, described as a “bi-lateral protocol”).
- An agreement between local partners, for example within a community safety partnership (which could be called a “multi-lateral”, or “local area” protocol).

15. Although the agencies involved would vary, and the agreement would be more or less complex, depending on the number of agencies involved, the basic content of the protocols would be very similar however the agreement is constructed.

16. There are a number of other forms of agreement in place covering the exchange of data about sex offenders. The most obvious of these is the ISCJIS Data Standards agreement. This covers data exchanges between criminal justice agencies relating to the prosecution of offenders, the punishment of offenders and the maintenance of criminal records. There are also a number of other agreements in place, for example relating to the commissioning and production of Social Enquiry and other pre-sentencing reports.

17. In the case of the ISCJIS Data Standards, these are explicitly identified within the National Concordat, but where other agreements exist, even where these are governed by National Standards, it is recommended that the parties to such agreements review these in the light of the National Concordat, and the Guidance presented here.

### **Types of data**

18. Information about sex offenders and sex offending exists in various forms. The two main forms of data are personal data, which may or may not be sensitive, and aggregate, or depersonalised data. It is important that any protocol deals explicitly with both types of data, as agencies have various legal obligations relating to each, as set out in the Data Protection

Act 1998 and other relevant legislation. These obligations will not be set out in detail here, but will be summarised in Annex 1.

19. It is also important that agencies consider the implications of data within their records pertaining to third parties, for example, family members of offenders or victims, witnesses and associates. It is suggested that any data sharing protocol specifically sets out the legal duties of each agency in relation to the management and sharing of third party data.

## **WHICH AGENCIES SHOULD BE INVOLVED IN DATA SHARING PROTOCOLS?**

20. ISSG has taken the view that all exchanges of information relating to sex offenders should be managed using a data sharing protocol. (The mapping exercise at Annex 4 outlines the key stages at which information is shared by agencies.) This means that *any* agency involved in sharing information about sex offenders should do so using a protocol. The only partial exception to this is that Procurators Fiscal may share information with defence agents.

### **Bi- and multi-lateral protocols**

21. In practice, this is likely to mean that the following agencies and departments will be involved in bi- or multi-lateral protocols:

- Police.
- Crown Office / Procurator Fiscal Service.
- Scottish Court Service.
- Scottish Prison Service.
- The State Hospital.
- The Scottish Children's Reporter Administration.
- Local authorities (including various departments such as social work, housing, education, and the district courts).
- Health services.
- Job Centre Plus.
- The voluntary sector (including registered social landlords and those providing service to offenders, whether subcontracted to other statutory agencies or not).

22. It is unlikely that much data will be exchanged between voluntary organisations other than where both are sub-contractors of statutory services. This situation should, however, be kept under review by the voluntary organisations concerned, and, if necessary, a bi-lateral protocol should be developed. An alternative approach would be for key voluntary organisations concerned in work with sex offenders to develop and agree a multi-lateral data sharing protocol.

### **Information sharing within services**

23. It is important to bear in mind that much of the information which is shared about sex offenders, and associated issues such as victim and public safety, is shared among departments *within* agencies. To ensure public safety, as well as, for example, the safety of individual offenders, it is important that these exchanges are managed effectively. There are also a range of issues agencies must be aware of in relation to their data protection

responsibilities in terms of sharing information within their own organisations<sup>9</sup>. Some agencies have chosen to develop what are, in effect, data sharing protocols, or binding guidance, which applies solely to exchanges within their own organisation. ISSG recommends that this approach be adopted by all agencies where more than one discrete service gathers and processes data on sex offenders (for example local authorities and health authorities).

24. In the specific case of voluntary organisations operating in multiple locations, it is recommended that a similar approach is adopted (an internal protocol, or binding guidance).

### **Data sharing between services in different areas**

25. This issue particularly affects those agencies involved in the management of offenders in the community, particularly the police, social work and health services. It is as important that these exchanges are managed effectively as any exchanges between different agencies. ISSG recommends that National Standards are the appropriate vehicle through which to manage these processes, for example for the transfer of social work files from one local authority to another.

### **Local area protocols**

26. It is a matter for agencies to agree whether a local area protocol is required, and, if so, the range of organisations which should be covered. It would be expected, however, that, as a minimum, the following agencies would be involved:

- Police.
- Local authorities (to include at least education and social work services).
- Housing providers (including the local authority and any social landlords involved in providing housing for sex offenders).
- NHS Boards and Trusts.
- Job Centre Plus.
- The Scottish Prison Service.
- Children's Reporter.

27. Wherever possible, voluntary organisations should be involved in the development and management of local area protocols. While, in some cases, voluntary organisations act as a subcontractor to local authorities (and to SPS), increasingly, they are providing services directly to sex offenders. The basis of the involvement of voluntary organisations is a matter for local partnerships to decide, but models, which could be considered, might include the nomination of one or more organisations to represent all of those involved, or, where a forum exists, a representative could be nominated by that body.

### **HOW SHOULD A DATA SHARING PROTOCOL BE DEVELOPED?**

28. Clearly, it is a matter for individual agencies to decide how a protocol should be developed, but a survey of various good practice guidance undertaken on behalf of ISSG identified a range of issues which agencies may wish to consider:

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<sup>9</sup> These are summarised in both the Scottish Executive and Office for Constitutional Affairs guidance outlined in Annex 1, as well as in various guidance available from the Office of the Information Commissioner.



- Many protocols have been developed by a short-life working group convened for that specific purpose.
- Some guidance suggests that there is a need for a specific champion, usually a senior member of staff, within each participating organisation.
- Although it seems obvious, it is also suggested that such a group, or any other arrangement considered, should involve *all* of the agencies which will be affected by the protocol.
- It is also suggested that the prospective parties to any agreement carry out an audit of their data holdings and procedures prior to embarking on the development of a protocol, in order to ensure that the protocol is comprehensive, and covers all the potential data shares.
- In the light of potential legal complexities, some guidance suggests that a short-life working group should contain, or should retain, a legal advisor.
- Notwithstanding the presence of a legal advisor on the group, most guidance recommends that specific legal opinion should be sought in relation to any protocol developed.
- Some guidance suggests that, once a protocol is agreed, it should be endorsed by senior figures within each agency, for example council leaders and chief executives, chief constables and agency chairs (and involving voluntary organisations in the same way where they are party to an agreement). A common way of illustrating this is for a “signatures” page to be included in any published version of a protocol.
- Most guidance suggests that agencies should develop a dissemination strategy, to include training and awareness raising for staff.
- As will be set out in more detail below, the management arrangements for the protocol should be agreed as part of its development process, and should include, for example, implementation and review dates, and a summary of success criteria.

## **HOW SHOULD A DATA SHARING PROTOCOL BE MANAGED?**

29. Once in operation, it is important that any data sharing protocol remains a live document. One way of ensuring this is to establish a group comprising a representative of each of the partners with direct responsibility for the management of the protocol.

30. It is suggested, in relation to management, that the following represents the minimum which should be agreed by the partners at the outset:

- The remit, membership and administrative processes related to any management group, including the basis of appointment of a chair, any specific voting rights and procedures for issues such as adding additional members and raising concerns about relevant matters.
- The means by which changes to policy and legislation will be monitored and how these will be reflected in revisions to the protocol.
- The implementation date for the protocol.
- The dates on which the protocol should be reviewed. (Clearly, this is a matter for the partners to each protocol, but it is suggested that 6 months, followed by an annual review would be a suitable minimum.)

- A commitment to monitor and evaluate the implementation and impact of the protocol at a set point in time (which may be two or three years from the date of implementation), together with a statement of the measures which will be considered in these processes.

These issues should be set out explicitly in the body of the protocol in order that they form an integral part of the agreement.

## **WHAT SHOULD A DATA SHARING PROTOCOL COVER?**

31. As will be clear from the previous paragraphs, there are a range of types of data sharing protocol. However, although their scope, and the numbers of signatories may vary, the basic content of protocols should be broadly similar. The subsections below will provide an overview of each of the main topics which should be covered in a typical data sharing protocol.

### **Core information**

32. It is suggested that each data sharing protocol should set out a range of core information. The extent and particularly the detail of this will vary, depending on the needs of the agencies involved. For example, a protocol between agencies which have shared data over an extended period using an agreed set of data standards is unlikely to require an extensive introduction, but where, for example, one or other partner has not previously operated in this way, a more extensive background section may help staff better understand the context within which data sharing is to take place.

33. As a minimum, it is suggested that each protocol should contain:

- A statement of intent by the partners to the Protocol, expressed in a positive tone and signed by senior staff within each organisation. It is important that this initial statement sets out clearly the *presumption* that data will be shared where it is desirable and legal to do so, and it is also likely to be helpful if a summary of the benefits to be gained from such sharing is presented.
- A list of the partners in the protocol, with contact information, and a lead officer named for each agency, or each service where, for example a number of local authority or health service functions are involved. Where it is intended that sub-contractors should be covered by the Protocol, this should be clearly stated.
- A statement of the purpose of the Protocol, a summary of its policy objectives and a summary of the broad types of data to be shared.
- A clear reference to the National Concordat and any other protocols which may impact on, or which may be affected by the newly agreed Protocol.

34. Clearly it is open to agencies to consider the inclusion of other material. Among the material which could be considered would be:

- Information about the work of the Expert Panel and ISSG .
- Current policy in relation to the management of sex offenders and any issues relevant to the subject, or geographical area of the protocol.

- Background information on the agencies concerned (which may be helpful where either new agencies, or new services – or staff – within agencies are likely to be required to work within the framework of the protocol) and their relationship to local structures such as Community Planning, or Community Safety Partnerships.
- A summary of the way in which the protocol was developed.

35. It is also suggested that any definitions central to data sharing arrangements are set out explicitly in the protocol. The core definitions relating to sex offenders, drawn from ViSOR, have been set out and agreed as part of the National Concordat and these should be reproduced in each protocol, together with any additional definitions which are relevant (for example, in relation to homelessness where housing-related data is included).

### **Duties, legislation etc**

36. A second area which should be covered by any data sharing protocol is the legal duties imposed on each partner in relation to the information to be shared. At the very least, this should consist of a summary of any specific legislation which applies to the data to be shared. It can, however, be helpful if extracts from relevant legislation and guidance are reproduced in an annex to the Protocol. This approach has been used successfully in a range of pre-existing protocols examined by ISSG. If this approach is adopted, however, clearly it is critical for this information to be maintained, and it is recommended that a named individual be given responsibility for ensuring that any extracts from legislation or guidance are current, and for ensuring that any new legislation or guidance is included.

37. The tone of any section relating to duties and legislation can be a key factor in the success or otherwise of a data sharing protocol. It is clear, from information provided to ISSG, and from wider research, that there are widespread misunderstandings about data sharing, particularly in relation to the common law duty of confidentiality and the implications of the Data Protection Act 1998. The Bichard Inquiry illustrated clearly the dangers of such misunderstandings. It is clear that, in some cases, staff use both “confidentiality” and the “Data Protection Act” as, in effect, excuses to block information sharing which may be in the public interest. The way in which a data sharing protocol deals with these issues is, therefore, very important. While it is critical that staff are aware of their obligations, some guidance can have the effect of making staff wary of any data sharing. It must be clear that there is a presumption to share information, and it must be clear that the protocol exists to *enable*, rather than *restrict* the flow of information.

38. There are two main areas in which legislation impacts on data sharing relating to sex offenders. The first relates to the powers of the agencies involved to share information, the second to the law relating to sex offenders directly. Although there is a clear public policy imperative to share information, the legality of this, even in relation to sex offenders, is rarely clear cut, except in limited cases such as the detection of crime and the administration of justice. In areas such as rehabilitation and management in the community, there are few areas in which information sharing is expressly permitted, and, therefore, some measure of assessment and justification on the part of agencies is required. Part of the purpose of the development of protocols is to help ensure that data sharing takes place within a lawful and justifiable framework.

The main legislation likely to impact on data sharing is listed below. Annex 1 provides a summary of the key considerations in relation to each.

39. In relation to data sharing per se, the main legislation to be considered in the development of a protocol includes:

- Broadly, administrative law, concerned primarily with whether or not the agency concerned has the power, express or implied, to share the information which is the subject of the protocol.
- The Human Rights Act 1998 and the European Convention on Human Rights, which provide a series of safeguards in relation to the collection, management, use and sharing of information about any individual (including sex offenders).
- Common law, which, in this context, relates particularly to the duty of confidentiality which may apply to agencies.
- The Data Protection Act 1998, which sets in place a range of safeguards to protect individuals' rights in relation to information held about them by public agencies.

40. The law in relation to sex offenders is continually evolving, and one of the key issues for any protocol is ensuring that any changes are reflected in policy and practice. For the purposes of the development of data sharing protocols, the key relevant legislation includes:

- Sex Offenders Act 1997 and Sexual Offences Act 2003
- Criminal Justice and Court Services Act 2000
- Crime and Disorder Act 1998
- Criminal Procedure [Scotland] Act 1995
- Anti-Social Behaviour (Scotland) Act 2004
- Protection of Children and Prevention of Sexual Offences Act 2005
- Management of Offenders etc (Scotland) Act 2005

41. There is a wide range of other legislation which may impact on information sharing in relation to sex offenders, including:

- Housing (Scotland) Act 2001
- Homelessness etc (Scotland) Act 2003
- Local Government in Scotland Act 2003
- Mental Health (Care and Treatment) (Scotland) Act 2003
- National Health Service Reform (Scotland ) Act 2004

### **Data coverage**

42. It is important that any protocol sets out clearly and unambiguously the data which will be shared. This process would clearly be greatly aided if agencies accept the recommendation made earlier to audit both their data holdings and procedures prior to the development of the protocol. The level of detail provided in the body of the protocol can vary, with, for example, detail being provided in an annex. In the specific case of data sharing which is already covered by data standards (such as the ISCJIS data standards), this section can be covered simply by reference to these standards.

43. Agencies may find it helpful to set out explicitly any relevant data which is *not* to be shared, and which would, therefore, be excluded from the Protocol. This may help to avoid misunderstandings, particularly where staff change, or where new systems are introduced.

44. Where data is to be shared only in exceptional circumstances (for example, sensitive data which would only be shared in the event of immediate risk to a child), this should also be referred to explicitly, with a clear accompanying statement setting out the circumstances which must apply for this to take place, and the procedure which must be adopted by each party to trigger its release.

## **Procedures**

45. There are two main approaches which may be taken in relation to the description of procedures relating to data sharing. The first is that these can be described in the body of the protocol. The second is that these can be described in service-specific annexes which are integral to the protocol, and which are shared among the partners. However the information is presented, the following issues should be covered.

- A statement from each partner on measures in place to ensure confidentiality and prevent secondary disclosure, including procedures in place relating to third party information.
- A summary of the precise procedures to be adopted by each partner to the agreement relating to the transfer of information. These should be as detailed as possible in order that the protocol can serve as a live management document. It is suggested that this section cover the following:
  - A summary of agreed procedures for the management of data within each partner organisation – it can be helpful if these are reproduced as an annex and are considered integral to the protocol.
  - Individual contacts for each type of data, or each department as relevant – clearly these should be updated regularly.
  - A statement of the level of authority required for each type of data to be transferred.
  - A summary of procedures which would apply, for example, in the absence of designated decision makers, where there are urgent requests (such as those relating to child protection), for the resolution of disputes, and for the notification and correction of errors.
  - A summary of procedures covering data weeding, and the need to consult with, and, where necessary, secure the agreement of interested parties.
  - A summary of the procedures to cover the notification and correcting of changes within the framework of the Data Protection Act 1998.

It may also be useful to set out clearly any agreed single or multi-agency training agreed to ensure the effective implementation of the Protocol.

### **Management arrangements**

46. The protocol should also contain clear information on how the protocol will be managed. This should cover as a minimum the issues described in the previous section.

### **OVERVIEW**

47. Data sharing is a critical component of ensuring public safety. In order that this is managed effectively, it is important that clear agreements are in place covering each aspect of the data sharing process. Data sharing protocols are, in their simplest form, agreements to enable the flow of information in an efficient and legal manner. All data sharing relating to sex offenders will be managed using protocols. This Guidance, alongside the National Concordat, provides a framework within which protocols can be consistently implemented among agencies involved in the assessment and management of risk in Scotland.

## **ANNEX 1 : KEY LEGAL CONSIDERATIONS**

48. This Annex will provide a brief overview of some of the key legal considerations which impact on sharing information about sex offenders. There is a range of other, more comprehensive guidance available, which agencies should refer to in the development of protocols. Among the most relevant and useful guidance is:

- Data Sharing: Legal Guidance For The Scottish Public Sector – published by the Scottish Executive and available via the Open Scotland website ([www.openscotland.gov.uk](http://www.openscotland.gov.uk))
- Guidance on Disclosure and Sharing of Information Antisocial Behaviour etc. (Scotland) Act 2004 – published by the Scottish Executive and available via the Scottish Executive website ([www.scotland.gov.uk](http://www.scotland.gov.uk))
- Public Sector Data Sharing : Guidance on the Law – published by the Department for Constitutional Affairs ([www.dca.gov.uk](http://www.dca.gov.uk))
- Data Protection Act 1998 Legal Guidance – published by the Information Commissioner and available from the Commissioner’s website ([www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk))
- MAPPA Guidance (including a section in information sharing) – published by the Probation Directorate of the Home Office and available from [www.probation.homeoffice.gov.uk](http://www.probation.homeoffice.gov.uk)

49. There is also a model protocol on the Crime and Disorder website ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)).

50. Clearly, only the first two pieces of guidance identified pertain specifically to Scotland, but, as will be set out below, much of the legislation which is relevant to data sharing is either UK-wide, or, in some cases EU-wide.

### **Key legislation**

51. The law relating to data sharing is complex, in part because there are a wide range of potential considerations. It is clear that there is no single piece of legislation governing these processes, and, even where legislation exists, it is rarely definitive. The Guidance, in common with other publications relating to data sharing, recommended that specific legal advice be sought by each partnership prior to implementing any protocol, and this summary cannot be seen as a substitute for this. It is clear that the responsibility for ensuring the legality and appropriateness of each data share rests with the agencies concerned. It is also clear, from existing guidance and advice provided to ISSG, that it is important that each aspect of data sharing is scrutinised in isolation, and that steps are put in place to ensure that, where the law demands case by case consideration, this can take place.

52. It is important, however, as set out in the Guidance, to view the law not as a barrier to data sharing, but as a framework within which it should take place. Much of the law relating to data sharing exists to protect the rights of individual data subjects (including sex offenders), but it is also clear that, where circumstances warrant, these rights can be superseded by wider concerns, primarily, in the case of sex offenders, public safety concerns. Sharing information is central to protecting the public from the threat posed by sex offenders and agencies have, therefore, a duty to ensure that this is carried out. The National Concordat is based on an explicit presumption that relevant data will be shared where it is appropriate

and legal to do so. The summary below sets out the considerations about which agencies should be aware in order to ensure that all relevant information is shared within this legal framework, balancing the rights of individual data subjects and the wider public.

### **Ownership of information**

53. A data sharing protocol cannot define ownership of any information relating to sex offenders. The ownership of information is defined by the Data Protection Act and the legal issues involved in the disclosure of both personal information and sensitive personal information are clearly set out in the Act (and summarised below). In the context of sharing information about sex offenders, it is worth bearing in mind that at each point, the disclosure of information is governed by the Act (and through this, other legislation summarised below). This means, in practice, that an agency which receives information is also bound by the same duties as the agency which passed the information, and this issue (known as secondary disclosure) is of critical importance. This means, for example, that a social work service cannot legally pass information obtained from another agency (say, for example, from SPS) to a third party (say a housing association) without the express consent of the original data controller.

### **The “tests”**

54. The Scottish Executive Guidance on Data Sharing sets out a four stage process which allows an agency to assess whether or not any proposed data sharing is legal<sup>10</sup>.

- Establish whether you have the power to carry out the function to which the data sharing relates. In doing so it will be important to ascertain whether there are express statutory restrictions on the data sharing activity proposed, or any restrictions which may be implied by the existence of other provisions of statute or common law.
- Decide whether the sharing of the data would infringe rights under Article 8 of the European Convention on Human Rights in a way which would be disproportionate to the achievement of a legitimate aim and unnecessary in a democratic society.
- Decide whether the sharing of the data would breach any common law or statutory obligations of confidence.
- Decide whether the sharing of the data would be in accordance with the Data Protection Principles.

The remainder of this annex provides an overview of the considerations which apply to each of these tests.

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<sup>10</sup> These bullets are reproduced from “Data Sharing: Legal Guidance For The Scottish Public Sector”, Scottish Executive 2004



*The “power” to share information<sup>11</sup>*

55. In relation to the powers of the agencies involved, it is essential that the data share relates to an area which is within the powers of that agency. There is no single power allowing criminal justice agencies to exchange information relating to sex offenders (or in relation to offending more generally), and it needs to be clear, therefore, on an agency by agency basis, that the reason why an agency holds and processes data relates directly to its powers. This is not necessarily clear cut either, as the work an agency actually carries out may have evolved far beyond its original defined role in statute, and there is, therefore, a need for agencies to be satisfied that they are not, in the first instance, acting ultra vires, and secondly, that the information exchange is consistent with their powers and does not breach any of the relevant rights-based legislation listed in the body of the Guidance.

56. There are relatively few examples of express powers (known as gateways) existing relating to sharing information, and, therefore, most decisions have to be based on implied powers. A recent example of such a gateway in a criminal justice context is Section 106 of the Antisocial Behaviour etc. (Scotland) Act, which permits information sharing for any purposes set out in the Act. At a wider level, the Local Government in Scotland Act 2003 places a power on local authorities to promote or improve the well – being of people within its area. It has been argued that this provides a gateway power which may permit the exchange of information in relation to community protection functions, including the management of sex offenders. In most cases, however, where powers to share information exists, these are implied.

57. It is clear, as set out earlier, that agencies cannot assume that, because they perceive data sharing to be in the public interest, that it will necessarily be lawful. The Scottish Executive Guidance recommends explicitly that agencies which are party to data sharing (or more widely, process information about individuals) consider carefully (and if necessary, take advice on) the legal basis upon which this is carried out. It is also clear that, even where an express or implied power exists, it cannot be assumed that *any* data sharing will be legal.

*Article 8.1 of the ECHR*

58. Agencies must also satisfy themselves that they are acting within the terms of the Human Right Act 1998 which confirms the provision of the European Convention on Human Rights (ECHR) in domestic law.

The key Article within ECHR relating to data sharing is Article 8. Article 8 provides that:

*‘8.1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*8.2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime,*

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<sup>11</sup> There is an extended discussion in the Scottish Executive Legal Guidance about the status of various bodies likely to be involved in the management of sex offenders and the implications of this in terms of the existence of express or implied powers.

*for the protection of health or morals, or for the protection of the rights and freedoms of others.'*

59. In effect, Article 8.1 provides a basic right to the privacy of personal information. This is not an absolute right, but public agencies which wish to disclose information about an individual (specifically to another agency in this case) have to establish that this is necessary and lawful under the terms of Article 8.2. There is some degree of crossover between this, the discussion on the powers of agencies (above) and the provisions of the Data Protection Act (see below).

#### *The obligation of confidence*

60. Many of the agencies involved in the management of sex offenders also have a common law duty of confidence. In essence, data subjects have a common law right to confidentiality unless there is a public interest served by breaching this. This is another area (along with data protection) where there is considerable controversy. There is widespread concern either that many staff do not properly understand their duties in relation to "confidentiality", or use the term as a blanket justification for a failure to share, or a failure to consider sharing information. Many professional bodies (for example, in social work, police and health fields) have produced guidance on interpreting the duty of confidentiality. As with the Concordat, these guidance documents start from the *presumption* that effective and lawful data sharing is in the public interest, and that agencies (and professional bodies) have an obligation to ensure that staff (or members) do not wilfully, or unknowingly, fail to discharge their duties, in this case in relation to public safety citing confidentiality as a justification.

#### *The Data Protection Act*

61. The Data Protection Act is arguably the most misunderstood and misquoted of current legislation. Evidence presented to ISSG (as well as evidence from elsewhere) suggests that staff in many agencies are concerned about the implications of the Act, and are, as a consequence, reluctant to share information. While the Scottish Executive wishes to ensure that the rights contained within the Act are observed, it is imperative that the maximum amount of information consistent with the provisions of the Act is permitted to flow between agencies. It is essential, therefore, that each data share can satisfy the tests contained within the Act (and which are set out below). The duty to do this rests with the data controller at each stage, and each exchange must be assessed on its merits. It is strongly recommended, therefore, that any data sharing protocol contains a section on the implications of the Data Protection Act for the agencies involved, and for the information which it is proposed to share.

62. For data processing<sup>12</sup> (and, therefore, sharing) to be lawful, each of the eight principles set out within the Data Protection Act must be satisfied, *even where* there is a statutory basis for information sharing. These principles are set out below, namely that data should be:

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<sup>12</sup> Data processing covers a wide array of potential issues, including the gathering, storage, manipulation, interrogation, disclosure and sharing of information. A reasonable working assumption is that data processing, and hence the provisions of the Act, covers any potential use of data relating to sex offenders.

1. Processed fairly and lawfully
2. Processed only for specified, lawful and compatible purposes
3. Adequate, relevant and not excessive
4. Accurate and up to date
5. Kept for no longer than necessary
6. Processed in accordance with the rights of data subjects
7. Kept secure
8. Transferred outside the European Economic Area only if there is adequate protection in the country to which the data is to be transferred.

63. In relation to sex offenders, these tests may not be as straightforward as they may seem, and work is ongoing to assess the legal issues involved at each of the main points of data exchange with the criminal justice system.

64. Virtually all of the information about sex offenders held by criminal justice agencies would be categorised as sensitive personal information and, as such, for any processing (and hence sharing of this information) to be lawful (and hence meet the first principal set out above), it must pass a number of *additional* tests as set out in Schedules 2 and 3 of the Act. In essence, the sharing of sensitive personal data can only be lawful if any two standards in Schedule 2, and any one standard in Schedule 3 are met. For reference, Schedules 2 and 3 are reproduced at the end of this Annex.

65. It is critical to bear in mind that the Act also applies to information shared between departments, for example between child protection and criminal justice teams in a social work department, or between a social work and housing service, even if these are part of the same administrative unit. Data which is transferred within agencies must satisfy the same eight principles and Schedule 2 and 3 tests as if it were to be disclosed to another agency.

66. It is also important to bear in mind that, on the basis of current legal opinion, “data” in this context means information about sex offenders, rather than the format in which it is presented. This means, for example, that the tests have to be applied to each of the pieces of information within a social enquiry report rather than to the report as a whole.

67. Section 29 of the Data Protection Act exempts from certain provisions of the Act personal data processed for (i) the prevention or detection of crime; (ii) the apprehension or prosecution of offenders. Current advice from Scottish Executive solicitors is that this exemption must be applied on a *case by case* basis, and cannot be taken to be a blanket exemption for criminal justice purposes. The legal basis is that operation of the Act to prevent the flow of sensitive personal information must “prejudice” the prevention or detection of crime, or the apprehension or prosecution of offenders.

68. “Factual” information about sex offenders is subject to the same tests as any other sensitive personal information, although there may, in some cases, such as previous conviction information, be a clear basis for sharing in statute.

## **Consent**

69. The issue of consent is complex. Whilst, in ordinary circumstances, the giving of informed consent simplifies the transfer of information, in the context of sharing information about sex offenders, two issues are of critical importance:

- The data subject (in this case, the offender) can refuse to give consent, or can give, in effect, partial consent.
- The data subject can, at any time, withdraw consent.

70. The practical effect of either course of action is that data sharing, assuming consent was the means by which the first data protection principle was satisfied (see below), would be unlawful. This means that it is critical that the lawfulness of any information sharing about sex offenders **does not rely solely on the consent of the offender.**

**Note : The Data Protection Act 1998 - Schedule 2 and 3 conditions**

**Conditions in Schedule 2:**

Paragraph 1: The data subject has given consent to the processing.

Paragraph 2: The processing is necessary for (a) the performance of any contract to which the data subject is a party; or (b) for the taking of steps at the request of the data subject with a view to entering into a contract.

Paragraph 3: The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

Paragraph 4: The processing is necessary in order to protect the vital interests of the data subject.

Paragraph 5: The processing is necessary: (a) for the administration of justice; (b) for the exercise of any functions conferred on any person by or under any enactment; (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department; or (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

Paragraph 6(1): The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Paragraph 6(2): The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

**Conditions in Schedule 3:**

Paragraph 1: The data subject has given explicit consent to the processing.

Paragraph 2: The processing is necessary for the purposes of exercising or performing a legal right or obligation in the context of employment.

Paragraph 3: The processing is necessary to protect the vital interests of the data subject or another in cases where consent cannot be obtained.

Paragraph 4: The processing is of political, philosophical, religious or trade union data in connection with its legitimate interests by any non-profit bodies.

Paragraph 5: The processing is of information made public as a result of steps deliberately taken by the data subject.

Paragraph 6: The processing is necessary in connection with legal proceedings or the seeking of legal advice.

Paragraph 7: The processing is necessary (a) for the administration of justice; (b) for the exercise of any function conferred on any person by or under any enactment; (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

Paragraph 8: The processing is necessary for medical purposes and is carried out by medical professionals or others owing an obligation of confidence to the data subject.

Paragraph 9: The processing is necessary for ethnic monitoring purposes.

Paragraph 10: The personal data are processed in circumstances specified in an order made by the Secretary of State for certain purposes. The Data Protection (Processing of Personal Data) Order 2000 (SI 2000 No 417) specifies a number of circumstances in which sensitive personal data may be processed such as crime prevention, policing and regulatory functions (subject to a substantial public interest test); counselling (subject to substantial public interest test); insurance, equality monitoring in the area of disability and religious or other beliefs; and research. A further order relates to the processing of sensitive personal data by MPs and other elected representatives (The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 (SI 2002 2905)).

## **ANNEX 2 : NATIONAL STANDARDS FOR INFORMATION SHARING ON SEX OFFENDERS**

Recommendation 65 from the Expert Panel states:

“the importance of information sharing should be reflected in the key performance indicators of individual agencies.”

The ISSG recognised that whilst key performance indicators are specific to individual agencies, a set of national standards would create a framework for the KPIs within individual agencies. The framework would include:

- a set of agreed national standards to share information on sex offending
- a set of targets within each individual agency to support the standards
- an internal system to monitor the sharing of information within each agency
- Inspectorates to monitor performance in information sharing.

On that basis, the ISSG agreed national standards to set out what every agency undertakes to do to ensure the effective transfer of information under its obligation to protect the public and to ensure that decisions on sex offenders are made on the best possible information. The standards provide the basis for agencies to develop effective systems for the transfer of information on sex offending and to ensure that through raised awareness, good practice and robust systems and procedures, agencies are helped to ensure the protection of the public, especially children, from sex offenders. The standards also provide a benchmark against which practice can be measured and audited in order to assist agencies in reviewing and evaluating current practice and identifying areas for further development. The standards make explicit what is expected from those agencies with responsibility for protecting the public from sex offending. They provide a basis for accountability and challenge if practice falls below expected standards.

### **Standard 1: Policy and Procedures**

Agencies have written policies and procedures in place, supported by robust systems and structures to collect, store and ensure the effective handling and transfer of information with timed targets for the speed of transfer.

- Policies and guidance set out the principles and reasons for information sharing
- The statutory authority and obligations for sharing information on sex offenders are included in the written procedures
- A senior member of staff provides leadership and takes responsibility for high level decisions on the release of information, including decisions not to share which should be subject to audit
- There are clear instructions, regularly updated, on how the arrangements operate within the organisation
- Timed targets are set for the transfer of information and performance is monitored on a regular basis
- There is a procedure for ensuring that accurate records are maintained and processes are proofed for security integrity
- Rules for recording, managing and deleting information are in place.

**71. Standard 2: Processes for Managing the Partnerships and Flow of Information**

Agencies and staff are clear about the information to be transferred and received and the agencies with whom it can be shared.

- Local protocols are agreed with partner agencies and reviewed at regular intervals
- Rules are in place to establish which agency owns the data at each stage in the process
- A checklist is maintained of the information to be transferred at each stage, to whom and the timescales for doing so
- A checklist is maintained of the information to be received at each stage, from whom and the timescales for doing so
- The rules are set out for disclosing information to other public bodies
- Systems are in place to ensure that the process of transferring information to partners is secure.

**72. Standard 3: Management of People**

Staff are aware, knowledgeable and skilled in the information sharing principles and process, recognising their own needs and those of their partners.

- Staff roles and responsibilities are clearly set out in job descriptions
- Suitable training and supporting written material including checklists are provided for staff
- Staff participate in joint training with other agencies to develop shared understanding and effective communication.

**73. Standard 4: Performance Monitoring**

- Agencies have performance monitoring and reporting mechanisms in place, including an internal quality assurance process.



### **ANNEX 3 : AGREED DEFINITION OF TERMS**

In response to recommendations of the Expert Panel, signatories to the National Concordat have agreed to use the following terms defined with reference to the ViSOR system.

#### **Primary designations**

**Registered Sex Offender** – this being an offender that has been convicted of an offence that requires them to register under the Sex Offenders Act 1997 or the Sexual Offences Act 2003 or by the granting of a civil order which imposes such a requirement.

**Non Registered Sex Offender** – this being an offender who has been convicted of a sex offence, as determined by the Criminal Justice and Court Services Act 2000 or the Sexual Offences Act 2003 which does not carry a registration requirement, but have received the appropriate sentence.

**Violent Offender** – an offender that has been convicted of a violent offence as determined by the Criminal Justice and Court Services Act 2000 and has received the appropriate sentence or, as identified under Schedule 15 of the Criminal Justice Act 2003 having received the appropriate sentence.

**Dangerous Offender** – this being an offender, with the relevant offence, who is demonstrating behaviour that is deemed to pose a significant risk of harm to the public.

**Potentially Dangerous Person** – this being a person, without a conviction or a relevant offence, who is demonstrating behaviour that is deemed to pose a significant risk of harm to the public.

#### **Secondary designations**

These terms form a core dataset on sex offenders (and violent offenders), and any national or local additions to this should be implemented so as to protect the integrity of these categories.

The following sub-categories of **Registered Sex Offender** have been agreed. These should only be used in a way which allows the primary designation of Registered Sex Offender to be readily identified. The agreed subcategories are:

- Registered Sex Offender – Currently registered
- Registered Sex Offender – Required to register but has not yet done so. (This would include those serving a prison sentence who would be required to register on release.)

The following sub-categories of **Non Registered Sex Offender** have been agreed. These should only be used in a way which allows the primary designation of Non Registered Sex Offender to be readily identified. The agreed subcategories are:

- Non Registered Sex Offender – Not required to register
- Non Registered Sex Offender – Previously registered but the period has expired.

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**INFORMATION SHARING STEERING GROUP**

**CONCORDAT**

**SHARING INFORMATION  
ON  
SEX OFFENDERS**



**November 2005**

**CONCORDAT: SHARING INFORMATION ABOUT SEX OFFENDERS**



## **INTRODUCTION**

1. Public protection depends upon the effectiveness not only of individual agencies but also the extent to which agencies work together and share information. This Concordat represents a positive commitment from the agencies noted below to share information about sex offenders within a nationally agreed framework for safeguarding the safety of the public.

## **BACKGROUND**

2. This Concordat stems from the work of the Expert Panel on Sex Offending. The Panel recognised that a large number of agencies, including the police, prosecutors, courts, prison service, criminal justice social work, as well as housing, health and education authorities play a role in managing the risk posed by sex offenders. The Panel concluded that these agencies (working with voluntary sector partners) have a duty to deliver the safer environment which communities expect and deserve but that there is a tendency for individual agencies to focus their attention on improving their internal procedures. This results in gaps in the system which sex offenders can exploit.

3. The Panel therefore called for a programme of action where:

- Agencies and organisations who work with sex offenders work together to overcome the risks which sex offenders present.
- Each organisation has a clear understanding of its own role and responsibilities in relation to sex offenders.
- Institutional barriers which prevent a more effective co-ordination of practices and integration of services are tackled, and
- The practical and operational difficulties which exist are addressed.

4. In 2003, the Solicitor General convened an Information Sharing Steering Group (ISSG) with the following remit:

- To ensure the efficient and effective flow of information between the key agencies involved in the management of sex offenders by developing protocols, guidance and strategies. These will address where necessary, issues of confidentiality and data protection in a way which underpins the improved multi-agency arrangements endorsed by the report of the Expert Panel on Sex Offending "Reducing the Risk".
- To achieve agreement of the relevant agencies on the group to implementation of its work through appropriate consultation.

5. ISSG has met on 12 occasions since 2003, and has considered each of the recommendations relating to information sharing made by the Expert Panel. This Concordat and its associated guidance is a direct response to Recommendation 64, which states:

*“Protocols to provide a framework for information sharing and joint working should be developed. These should draw on the best examples of current good practice and should be kept under review to ensure that they do not degrade and become less useful over time. The development of these protocols should involve liaison with relevant voluntary organisations.”*

6. Since 2001, a number of bilateral and multi-lateral protocols have been developed to manage the flow of information between agencies involved in the criminal justice process. These protocols, however, cover only some areas, and generally only some agencies in each area. It is important that the right information is available at the right time to enable all agencies to assess and manage risk effectively and to protect the public.

7. Information sharing in relation to sex offenders is central to public protection and public reassurance. Information can be shared for a wide range of reasons, some of which are summarised below:

- For the prevention, detection and reporting of crime
- For the prosecution of offenders
- To inform the court about possible sentences
- To assess the risks and needs of prisoners
- To facilitate rehabilitation or intervention both in prison and in the community
- To determine an offender's suitability for parole
- To assess and manage risk
- To develop management plans for offenders to ensure the safety of the community
- To protect children
- To protect offenders
- To track offenders
- For research, monitoring and statistical purposes
- To assess disclosure requirement by chief constables under the Sexual Offences Act 2003

8. The agencies which have signed this Concordat have, therefore, come together to agree a set of principles and working arrangements which will improve their systems and procedures to ensure that public safety is given the highest level of priority through ensuring that **all** relevant information is shared.

9. The Management of Offenders (Scotland) Bill, introduced in the Scottish Parliament in March 2005 will strengthen the system further. It contains provisions which provide the police, local authorities and the Scottish Prison Service with a statutory function to establish joint arrangements, including the sharing of information, for assessing and managing the risk posed by sex offenders and serious violent offenders. Health services are also included as a responsible authority in relation to Mentally Disordered Offenders. In addition, the principle authorities will act in co-operation with other specified agencies in carrying out this function. Subject to Parliamentary approval, this will result in a more formalised and structured approach in line with the commitments set out in this Concordat.

## **THE BASIS OF THE CONCORDAT**

### **Legal Basis of the Concordat**

10. The purpose of this Concordat is to facilitate the lawful sharing of information between agencies. The Concordat (and its annexes), however, have no legal standing. It is a basic tenet of this Concordat that all agencies, and all staff of these agencies, and any actions, must comply with existing legislation. A summary of relevant legislation is contained in the Guidance on the Development of Protocols, in order to assist professionals in their understanding of what they can and cannot do, but it remains the responsibility of each individual agency to establish the legal basis for its actions.

### **The Agreement to Share Information**

11. The Agencies listed below agree the following:

- To work together to manage the risk to the public posed by sex offenders.
- To share any information about sex offenders necessary to ensure that this objective is achieved, while ensuring that the rights of individuals are protected.
- To presume that all relevant information will be shared where it is legal to do so.
- To ensure that information is gathered and managed in a way which facilitates sharing.
- To comply explicitly with the IS CJIS Data Standards where these are relevant.
- To comply with other agreed data standards (where relevant).
- To comply with the National Standards set out in Annex 2.
- To use the common definitions of terms set out in Annex 3.
- To take such steps as are necessary to ensure that information is collected, held and exchanged in a manner which is secure and conforms with relevant legislation, including the provision of training to staff (whether directly employed, or employed by a third party)
- To facilitate links to other relevant legal and administrative frameworks (for example Community Planning, Community Safety and Child Protection).

12. The agencies listed below also agree the following:

- To develop detailed protocols to manage the flow of information about sex offenders between partner agencies.

### **Agencies Covered by the Concordat**

13. The agencies covered by this Concordat are:

- Scottish Executive
- ACPOS on behalf of Scottish Police Forces

- Local Authorities (including CoSLA, ADSW, ADES, and SOLACE)
- Scottish Prison Service
- Scottish Court Service
- The Risk Management Authority
- State Hospital
- Scottish Children's Reporter Administration
- Crown Office and Procurator Fiscal Service
- Parole Board for Scotland
- NHS
- Chartered Institute of Housing in Scotland
- Voluntary Sector [representative of the voluntary sector forum]

14. Third parties contracted to any of the signatories should also be made aware of the terms of this Concordat.

### **The Scope of the Information to be shared**

15. The Concordat covers all information shared in relation to sex offenders which occurs at any point, broadly from the reporting of an offence to the management of an offender in the community following liberation. The information exchanges covered by this Concordat are summarised in Annex 1.

### **Nature of the Information to be shared**

16. Information about sex offenders and sex offending exists in various forms. This Concordat is taken to cover personal information, whether or not this information is sensitive under the terms of the Data Protection Act 1998, and depersonalised and non-personal information (or aggregate) information. The Concordat is also taken to cover such information regardless of the form in which it is held. Although the presumption of sharing is accepted by all the signatories, it remains the responsibility of each agency to assess whether, under the terms of relevant legislation, information can, in fact, legally be shared.

## **MANAGEMENT ARRANGEMENTS**

17. This Concordat will be managed by the National Advisory Body to be set up under the Criminal Justice Plan (December 2004)

### **Lead Officers**

18. For the purposes of enquiries about this Concordat, a list of lead officers is attached at Annex 4.

19. The date of this agreement is 14 March 2005.

### **Review**

This agreement will be reviewed on the following dates:



- 14 March 2006
- 14 March 2007

The Concordat will be reviewed annually thereafter. Notwithstanding these dates, any signatory can instigate a review of any aspect of the Concordat.

A formal evaluation of the Concordat will be undertaken not later than 14 March 2007



## **ANNEX 1 : INFORMATION EXCHANGES COVERED BY THIS CONCORDAT**

The overview below describes the main information exchanges covered by this Concordat. All exchanges are assumed to be two way.

### **Various Agencies to Police**

Prior to submitting a report to the Procurator Fiscal, police may request and receive information from a variety of agencies.

### **Police to Procurator Fiscal**

Information in relation to the prosecution of alleged offenders is passed from police to the Crown Office / Procurator Fiscal Service.

### **Police and Procurator Fiscal to Scottish Children's Reporter Administration and social work services**

Information is passed to SCRA in relation to both children who are perpetrators of crime, and who are victims of crime. Information is also passed to SCRA in relation to children who are at risk. Aspects of this information can also be shared with social work services

### **Procurator Fiscal to Courts**

Information relating to the prosecution of alleged offenders is passed between Procurators Fiscal and courts. This encompasses both courts managed by SCS and by local authority District Courts.

### **Procurator Fiscal to Defence Agents**

Information may be passed by the Procurator Fiscal to defence agents, although this exchange is clearly beyond the scope of this concordat.

### **Scottish Children's Reporter Administration to Sheriff Courts**

In certain circumstances, information is passed from SCRA to Sheriff Courts in relation to proof hearings.

### **Sentencing**

A range of information is gathered from social work or health sources on behalf of the court in order to inform the disposal. These reports (for example Social Enquiry Reports) become the property of the court.

### **Courts to SCRO (whether directly or via police forces)**

Court disposals are passed to SCRO. In most cases, these are passed directly, but in the case of some smaller district courts, these are passed via the police.

## **SCRA to SCRO**

In some instances, information is passed from SCRA to SCRO.

## **Courts to SPS, the State Hospital and Social Work Services**

On sentence or disposal, information relating to this is passed by the court to SPS (in the case of custodial sentences), the State Hospital or any hospital which detains patients under the Mental Health Act, or Social Work services (in the case of community disposals). The trial judge's report (where relevant) is passed to the Parole Board and to the Life Sentence Review Division of the Scottish Executive by SCS. Reports are passed to SPS by the Scottish Executive for life sentence prisoners, prisoners on extended sentences and children convicted on indictment, but for determinate sentence prisoners, reports are passed directly to SPS by SCS (although this is currently under review).

## **SPS and Social Work processes while in custody / Social Work processes during sentence**

Information is exchanged between SPS and prison and community-based social work services and the police while an offender is held in custody, in relation to, for example, temporary release. Information may be exchanged between social work services and voluntary organisations (or others) where a community disposal is imposed. Information may also be exchanged with health services.

## **The State Hospital, other mental illness hospitals, SPS, other health and social work services**

Exchanges of information both where an individual remains within the State Hospital or where he or she is transferred to SPS custody would be encompassed by this Concordat.

## **SPS and the Parole Board for Scotland**

SPS is charged with preparing parole dossiers on all offenders eligible and wishing to be considered for parole. Parole dossiers typically include information drawn from SPS, social work and health sources.

## **Pre-liberation, liberation and supervision in the community**

A range of agencies are involved in the preparation of offenders for liberation and their management in the community. This should also be taken to include the preparation for discharge of those detained at the State Hospital. Information passes between the agencies for the purposes of risk assessment, management and monitoring. A range of non-criminal justice agencies, such as health and housing may also be involved. Broadly, the exchanges covered would include the following agencies:

- SPS
- The State Hospital
- Police
- Social work services
- The Risk Management Authority
- Housing services, including social landlords
- Education services (including schools, further and higher education)
- Health services
- Voluntary agencies (both at their own hand and as subcontractors to any of the services set out above)



## **ANNEX 2 : NATIONAL STANDARDS**

### **Standard 1: Policy and Procedures**

Agencies have written policies and procedures in place, supported by robust systems and structures to collect, store and ensure the effective handling and transfer of information with timed targets for the speed of transfer.

- Policies and guidance set out the principles and reasons for information sharing
- The statutory authority and obligations for sharing information on sex offenders are included in the written procedures
- A senior member of staff provides leadership and takes responsibility for high level decisions on the release of information, including decisions not to share which should be subject to audit
- There are clear instructions, regularly updated, on how the arrangements operate within the organisation
- Timed targets are set for the transfer of information and performance is monitored on a regular basis
- There is a procedure for ensuring that accurate records are maintained and processes are proofed for security integrity
- Rules for recording, managing and deleting information are in place.

### **Standard 2: Processes for Managing the Partnerships and Flow of Information**

Agencies and staff are clear about the information to be transferred and received and the agencies with whom it can be shared.

- Local protocols are agreed with partner agencies and reviewed at regular intervals
- Rules are in place to establish which agency owns the data at each stage in the process
- A checklist is maintained of the information to be transferred at each stage, to whom and the timescales for doing so
- A checklist is maintained of the information to be received at each stage, from whom and the timescales for doing so
- The rules are set out for disclosing information to other public bodies
- Systems are in place to ensure that the process of transferring information to partners is secure.

### **Standard 3: Management of People**

Staff are aware, knowledgeable and skilled in the information sharing principles and process, recognising their own needs and those of their partners.

- Staff roles and responsibilities are clearly set out in job descriptions
- Suitable training and supporting written material including checklists are provided for staff
- Staff participate in joint training with other agencies to develop shared understanding and effective communication.

**Standard 4: Performance Monitoring**

- Agencies have performance monitoring and reporting mechanisms in place, including an internal quality assurance process.



## **ANNEX 3 : AGREED DEFINITION OF TERMS**

Signatories to this Concordat have agreed to use the following terms defined with reference to the ViSOR system.

### **Primary designations**

**Registered Sex Offender** – this being an offender that has been convicted of an offence that requires them to register under the Sex Offenders Act 1997 or the Sexual Offences Act 2003 or by the granting of a civil order which imposes such a requirement.

**Non Registered Sex Offender** – this being an offender who has been convicted of a sex offence, as determined by the Criminal Justice and Court Services Act 2000 or the Sexual Offences Act 2003 which does not carry a registration requirement, but have received the appropriate sentence.

**Violent Offender** – an offender that has been convicted of a violent offence as determined by the Criminal Justice and Court Services Act 2000 and has received the appropriate sentence or, as identified under Schedule 15 of the Criminal Justice Act 2003 having received the appropriate sentence.

**Dangerous Offender** – this being an offender, with the relevant offence, who is demonstrating behaviour that is deemed to pose a significant risk of harm to the public.

**Potentially Dangerous Person** – this being a person, without a conviction or a relevant offence, who is demonstrating behaviour that is deemed to pose a significant risk of harm to the public.

### **Secondary designations**

These terms form a core dataset on sex offenders (and violent offenders), and any national or local additions to this should be implemented so as to protect the integrity of these categories.

The following sub-categories of **Registered Sex Offender** have been agreed. These should only be used in a way which allows the primary designation of Registered Sex Offender to be readily identified. The agreed subcategories are:

- Registered Sex Offender – Currently registered
- Registered Sex Offender – Required to register but has not yet done so. (This would include those serving a prison sentence who would be required to register on release.)

The following sub-categories of **Non Registered Sex Offender** have been agreed. These should only be used in a way which allows the primary designation of Non Registered Sex Offender to be readily identified. The agreed subcategories are:

- Non Registered Sex Offender – Not required to register
- Non Registered Sex Offender – Previously registered but the period has expired.



## **Part 8 The NHS Roles and Responsibilities, Duty to Cooperate and Information Sharing.**

### **Multi Agency Public Protection Arrangements (MAPPA) and the NHS**

1. Sections 10 & 11 of the Management of Offenders etc (Scotland) Act 2005 (“2005 Act”) require the responsible authorities to jointly establish arrangements for the assessment and management of risk posed by certain offenders. Health Boards will be subject to two duties under sections 10 & 11 of the 2005 Act.

2. Health Boards will be the **responsible authority** if the relevant offender is a restricted patient. They will be required to work with the police, Scottish Prison Service and local authorities to **jointly establish** arrangements for the risk assessment and management of relevant offenders who are **restricted patients**. These provisions will be commenced once revised guidance on the Care Programme Approach has been issued and implemented.

3. Health Boards are also required to **co-operate** with the police, Scottish Prison Service, local authorities and other duty to cooperate agencies in respect of those sex and violent offenders covered by the provisions of sections 10 & 11 who are not restricted patients. This duty to co-operate extends to **all** such offenders, not just mentally disordered offenders who are restricted patients. These provisions commenced on **2 April 2007**.

4. Health Boards will appoint MAPPA Health representatives. Boards will nominate clinical and managerial input accordingly and this will normally be a senior clinician and a senior manager. They will form links with their local Data Sharing Partnership Group. Attached at Appendix A are the health representatives on MAPPA Implementation Groups who have already been identified. An up-to-date list of all MAPPA co-ordinators and representatives from each area will be held on the web and available at <http://www.scotland.gov.uk/Publications/2007/08/Contacts>. Also attached at Appendix B is draft guidance prepared by Lothian Health Board to meet their MAPPA responsibilities. This may be an aid to other Health Boards in developing similar guidance.

### **New Sex Offender Regulations**

5. New sex offender regulations to be made under section 96 of the Sexual Offences Act 2003, will come into force some time over the next few months. This will place a duty on hospital managers to notify the police of the discharge for 3 days or longer of a registered sex offender 14 days prior to discharge. Hospital managers will also be required to notify the police when a registered sex offender is transferred or when granted suspension of detention for 3 days or more. Guidance will follow prior to the regulations coming into force.

### **Identification of MAPPA offenders**

6. Health Boards were asked in HDL(2007)19 to identify convicted sex offenders on a hospital order in the hospital system (within mental illness or learning disability hospitals) and under their care. These individuals will be patients who are subject to sex offender notification requirements and on any of the following orders:-

- a) **Compulsion Order**
- b) **Hospital Direction**

**c) Transfer for Treatment Direction**

The police are the responsible authority for the operation of the sex offender notification scheme if the offender is in the community and is (a) subject to no form of statutory supervision; or (b) are not a restricted patient but subject to a mental health order and are a registered sex offender. Where patients who are registered sex offenders are already in the community they will be identified for MAPPA by the police through their registration. The health board needs to co-operate with other agencies in identifying offenders on the above orders so that all relevant offenders are covered by MAPPA. These will only include patients detained in mental illness hospitals under a statutory order.

7. The duty to co-operate extends to all such offenders not just mentally disordered offenders who are restricted patients. It is feasible that a sex offender may require hospital treatment under the civil provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 and their status may not be apparent to hospital. It is also possible that the sex offender may require treatment for physical ailments. These sex offenders will already be the responsibility of the police or the local authority. If there is any doubt about the status of a particular patient and the hospital has concerns they should liaise with their local sex offender unit. Equally if a sex offender poses a high risk and is admitted to hospital the police will share relevant information with health agencies as appropriate. Paragraphs 14-27 below provide further guidance on the general duty to co-operate provisions and the role of the NHS.

**The Sharing of Information**

8. Health Boards will be expected to have an appropriate Information Sharing Protocol (ISP) in place. Where health boards already have an ISP in place they will review to include an annex for MAPPA arrangements. The following basic principles should be used as a benchmark for management and treatment of convicted sex offenders:

- All individuals should be treated with respect. Lack of respect and stigmatisation may increase the risk of an individual re-offending;
- Wherever possible, individuals should be asked for consent to share information about them. Wherever possible an individual's requests to keep particular information confidential should be respected provided it is not essential to assess risk;
- The level of risk in these individuals may change with circumstances. Staff should be vigilant for triggers such as alcohol, opportunity, etc;
- All individuals are likely to require information-sharing on a need-to-know basis, depending on the risk they present.
- Plans should include specific plans about information - sharing, who will be responsible and how this will be done;
- Each Health Board area should appoint MAPPA representatives (both managerial and clinical may be necessary) and should make local arrangements to ensure best practice.

- These persons should be available to give advice to other staff on risk, and coordinate all sources of information within Health; cover for this will be needed 24/7.
- Good working relationships need to be established between MAPPA processes locally and Data Sharing Partnerships.
- Health Records Managers have an important role in identifying all health contacts and information on these individuals across primary and secondary care so that a full risk assessment can be undertaken.
- Caldicott Guardians are an important point of first contact for all agencies. They need to establish links with local MAPPA health representatives to ensure that any information on these individuals is shared promptly and appropriately to provide a safe 24/7 service.

More general guidance in relation to wider patient confidentiality issues is contained at paragraphs 28-31.

### **Health Boards responsibilities as a responsible authority in respect of restricted patients**

9. Once the relevant provisions are commenced, Health Boards will be the responsible authority if the offender is a restricted patient. As a responsible authority the Health Boards will be required to contribute to the preparation of an Annual Report including statistical and operational material – see guidance contained at Annex I. The expectation is that the Health Board will have to be able to demonstrate the effective establishment and implementation of the arrangements between agencies for the management of offenders subject to MAPPA arrangements. Guidance is contained at Part 9 on the strategic management arrangements. It will be for the Health Board to monitor and review the operation of MAPPA on a regular basis in respect of restricted patients. Updated guidance to reflect Health's responsibilities as a responsible authority will issue prior to the restricted patient provisions being commenced.

10. The provisions in respect of restricted patients will not be commenced until the Care Programme Approach (CPA) guidance has been issued and implemented. Guidance will issue in the autumn with CPA being implemented across Scotland by 1 January 2008. It is anticipated that this will allow the provisions in relation to all restricted patients to be commenced in Spring 2008.

11. Effective implementation of the Care Programme Approach will meet the statutory requirement of the Health Board as a responsible authority in establishing joint arrangements for the effective risk management of restricted patients. The Health Board's role in monitoring this process will be assisted by the Clinical Governance guidance which will issue along with the revised CPA guidance. The guidance will set standards for delivery of safe expert care including procedures for the operation of the Care Programme Approach, case review, clinical supervision, knowledge, qualifications, caseload, experience and competency in collaboration with Health Boards, Royal College of Psychiatrists and the Mental Welfare Commission. The Health Board will be responsible for ensuring processes are in place for risk proofing and quality assurance of their functions and duties.

12. Those provisions affecting restricted patients detained under the Criminal Procedure (Scotland) Act 2005, include:

- a) Patients who are detained under Section 57A and Section 59; and
- b) patients who are detained under Section 57 (2) (a) and (b) Compulsion Order with a Restriction order following a finding of insanity in bar of trial or acquittal on grounds of insanity

It is anticipated that the principles of the CPA guidance will also be adopted for mentally disordered offenders who are not restricted patients but who may pose a significant risk to the public.

13. Attached at Appendix C is background covering the statutory role of Scottish Ministers and the restricted patient casework team.

### **The NHS in Scotland – general duty to co-operate in provision of services**

14. While Britain is famous for its **national** health service, responsibility for the provision of health services in the constituent parts of the UK is devolved to its national administrations. Responsibility for the policy and funding of the NHS in Scotland therefore rests with the Scottish Executive. As a consequence of this the structure of the Scottish health service has begun to diverge from that in the rest of the UK as the Executive seeks ‘Scottish solutions to Scottish problems’.

15. The NHS in Scotland therefore exists to provide a safe, high quality health service designed to meet the needs of patients and their carers and families. The reports *Building a Health Service Fit for the Future and Delivering for Health*<sup>13</sup> set out a vision for an NHS that is proactive, modern, safe and embedded in communities.

16. Spending on healthcare in Scotland is relatively high compared to other UK countries. Budgeted expenditure on health in Scotland for 2005/06 was over 13 per cent higher than the UK average of £1,481 per head of population<sup>14</sup>. In 2006-07 funding for NHS in Scotland was some £9.5 billion.

### **Structure**

17. The NHS in Scotland has undergone major reorganisation in the recent years and the structure has changed significantly. The key change has been the establishment of single system working, in which NHS trusts were dissolved and 14 (originally 15<sup>15</sup>) unified NHS Boards established. The aim of single system working is to remove organisational barriers and establish shared aims and clear lines of accountability across NHS Board areas. Information about the services provided by, or how to contact a local NHS Board can be found on the Scottish Health Web site<sup>16</sup>. Or you can find the contact details in the phone book under ‘health services’.

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<sup>13</sup> <http://www.scotland.gov.uk/Publications/2005/05/23141307/13104> and <http://www.scotland.gov.uk/Publications/2005/11/02102635/26356>

<sup>14</sup> The Scottish Executive draft budget for 2007/08, Scottish Executive, September 2006.

<sup>15</sup> NHS Argyll and Clyde was dissolved in April 2006. The board’s services and responsibilities are now provided by NHS Greater Glasgow and Clyde and NHS Highland

<sup>16</sup> <http://www.show.scot.nhs.uk/>

## **NHS Boards**

18. NHS Boards have a strategic role in the management of the NHS locally. Their aim is to forge effective links with all its partners in care, such as patients, staff, local communities and excluded groups, so that their needs and views are placed at the heart of the design and delivery of local health services. NHS Boards are responsible for:

- developing plans for improving health services in their local area
- making sure local health services are of high quality and are performing well
- making sure that national priorities, for example programmes for improving cancer services, are delivered locally.

## **Primary and community-based services**

19. NHS Boards provide a comprehensive range of primary and community-based services for their population. This normally includes a range of specialist hospital services such as acute psychiatry, care of the elderly, learning disabilities and rehabilitation services.

### *Primary Care*

20. Primary Care is the care provided by the people you see when you first have a health problem. It might be a visit to a general medical practitioner (GP) or dentist, an optician for an eye test, or just a trip to a pharmacist to buy a cold remedy. All the people offering primary care are now managed by new local organisations called Community Health Partnerships – see below. NHS 24<sup>17</sup> is also a primary care service.

### *Secondary Care*

21. If a health problem cannot be sorted out through primary care, or there is an emergency, the next stop is hospital. If you need hospital treatment, a GP will normally arrange it for you. NHS hospitals provide acute and specialist services, treating conditions which cannot be dealt with by primary care specialists. The Hospitals Division of an NHS Board is responsible for planning secondary care. They look at the health needs of the local community and develop plans to improve health, set priorities locally and decide which services to provide to meet people's needs.

## **Community Health Partnerships**

22. The unified NHS Boards were charged with developing 41 Community Health Partnerships (CHPs) to improve collaborative working between primary and acute healthcare, and between health and their 32 local authority partners. CHPs were proposed in *Partnership for Care*<sup>18</sup> and introduced on a statutory basis by *The National Health Service Reform (Scotland) Act 2004*. They are not independent statutory bodies, but are committees or sub committees of an NHS Board.

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<sup>17</sup> <http://www.nhs24.com/html/content/default.asp>

<sup>18</sup> <http://www.scotland.gov.uk/Publications/2003/02/16476/18730>

23. CHPs are a key building block in the modernisation of the NHS, and the creation of joint services. They enable partners to work together, to improve the lives of the local communities they serve and they have a vital role in joint working, integration and service redesign. They provide a focus for the integration between primary care and specialist services, and with social care, and ensure that health improvement for their local population is placed at the heart of service planning and delivery. To achieve this, CHPs:

- link clinical teams
- work in partnership with local authorities, the voluntary sector and others to support the improvement of the health of local communities
- actively involve the public, patients and carers in decisions concerning the delivery of health and social care for their communities.

24. CHPs operate differently across Scotland to reflect local circumstances. The schemes of establishment differ in the proposed governance, leadership and reporting structures, as well as in levels of devolved responsibility. But there are key standards of governance that should be in place regardless of how each CHP is operating

### **Mental Health Services**

25. Mental health services can be provided through a GP, other primary care service, or through more specialist care. This might include counselling and other psychological therapies, community and family support, or general health screening. For example people suffering bereavement, depression, stress or anxiety can get help from primary care or informal community support. If they need more involved support they can be referred for specialist care.

26. Specialist mental health care is normally provided by specialist mental health services in NHS hospitals or local authority social work departments. Local services can range from psychological therapy, through to very specialist medical and training services for people with severe mental health problems. The Edinburgh Royal Hospital for example provides acute psychiatric and mental health services, including treatment for learning disabilities and dementia. Its specialist services include centres for the treatment of eating disorders, alcohol problems and young people's mental health.

27. The State Hospital at Carstairs is one of four high secure hospitals in the UK – and the only one of its kind in Scotland. It is a national service for Scotland and Northern Ireland and provides assessment, treatment and care in conditions of special security for individuals with mental disorder who, because of their dangerous, violent or criminal propensities, cannot be cared for in any other setting.

### *Patient Confidentiality and Information Sharing*

28. While all health professionals have a legal duty to provide confidential health care, the statutory provisions<sup>19</sup> which govern this allow the sharing of information in appropriate circumstances to protect the public or to prevent or detect crime – see the *NHS Code of Practice on Protecting Patient Confidentiality*<sup>20</sup>. The Codes of Conduct of health

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<sup>19</sup> <http://www.opsi.gov.uk/ACTS/acts1998/80029--d.htm#29>

<sup>20</sup> <http://www.confidentiality.scot.nhs.uk/publications/6074NHSCode.pdf>



professional bodies similarly recognise the importance of promoting the public interest in the prevention and detection of crime through the appropriate sharing of information with the police and criminal justice system.

29. As the ‘doctor/patient relationship’ adds an extra dimension of sensitivity for health professionals when working with other agencies it will be important to observe the principles which underpin the duty to cooperate when establishing arrangements to co-operate with NHS mental health services.

30. The process of establishing those arrangements should involve a mutual clarification of expectations based upon the role and authority of the role of each agency’s representative. Discussions with the Royal College of Psychiatrist’s Forensic Faculty have helpfully highlighted the importance of clarity of role and authority. The Royal College has helpfully signalled the importance of senior representation in the guidance it is issuing to its members on MAPPA. The guidance can be accessed through the following link:

<http://www.rcpsych.ac.uk/members/currentissues/publicprotection.aspx>

31. The benefits for the health service of co-operation in the MAPPA have been summarised as providing:

- a source of information about patients to ensure the safety of patients and staff
- a conduit of referral and framework for joint working
- a useful source of advice on the appropriateness and implications of various medical treatments/interventions.

In the event NHS staff have concerns or require further information or advice if they suspect that a patient they are caring for is a registered sex offender they should contact their local Offender Unit (and not the local police station).



## APPENDIX A

## Health Service Representatives on MAPPA Implementation Groups

<b>CJA</b>	<b>Name</b>	<b>Title</b>	<b>Contact details</b>
Fife and Forth Valley	Bob Mclean	<b>Fife</b> NHS Representative General Manager mental health	<a href="mailto:BobMcLean@fife-pct.scot.nhs.uk">BobMcLean@fife-pct.scot.nhs.uk</a>
Forth Valley	1. Angela Holmes 2. Jan Jamieson	Consultant Psychologist,	Tel. 01324 667720 email: <a href="mailto:Angela.Holmes@fvpc.scot.nhs.uk">Angela.Holmes@fvpc.scot.nhs.uk</a> e mail: <a href="mailto:Jan.Jamieson@fvpc.scot.nhs.uk">Jan.Jamieson@fvpc.scot.nhs.uk</a>
Glasgow	Martin Montgomery	General Manager Forensic Services	1 <sup>st</sup> Floor, Admin Building Leverndale Hospital 510 Crookson Road Glasgow  <a href="mailto:Martin.Montgomery@ggc.scot.nhs.uk">Martin.Montgomery@ggc.scot.nhs.uk</a>
Lanarkshire	1.Iain Mackenzie  2. Anne MacFarlane	Team leader Forensic Services  Care Management Coordinator	<a href="mailto:Iain.Mackenzie2@lanarkshire.scot.nhs.uk">Iain.Mackenzie2@lanarkshire.scot.nhs.uk</a>  Hartwoodhill Hospital Bute Building Hartwood Shotts MI7  <a href="mailto:Anne.MacFarlane@lanarkshire.scot.nhs.uk">Anne.MacFarlane@lanarkshire.scot.nhs.uk</a>
Lothian and Borders	Phil Mackie BA FRIPH FFPH  Dr Rajan Darjee	Snr Specialist in Public Health Directorate of Public Health and Health Policy Lothian NHS Board  Consultant Forensic Psychiatrist	Deaconess House 148 Pleasance Edinburgh EH8 9RS  <a href="mailto:phil.mackie@lhb.scot.nhs.uk">phil.mackie@lhb.scot.nhs.uk</a>  Orchard Clinic Royal Edinburgh Hospital Morningside Terrace Edinburgh EH10 5HF <a href="mailto:Rajan.Darjee@lpct.scot.nhs.uk">Rajan.Darjee@lpct.scot.nhs.uk</a>

North Strathclyde	Martin Montgomery	General Manager Forensic Services	1 <sup>st</sup> Floor, Admin Building Leverndale Hospital 510 Crookson Road Glasgow <a href="mailto:Martin.Montgomery@glacomen.scot.nhs.uk">Martin.Montgomery@glacomen.scot.nhs.uk</a>
Northern Grampian	Bill Harrision	General manager/Clinical Director	Fulton Clinic Royal Cornhill Hospital Cornhill Road Aberdeen AB25 2ZH Tel: 0845 456 6000 Ext 57212 E-mail: <a href="mailto:bill.harrison@gpct.grampian.scot.nhs.uk">bill.harrison@gpct.grampian.scot.nhs.uk</a>
Northern			
South West Scotland	Dr David Hall	Director of Psychiatric Services	NHS Dumfries & Galloway Queensberry West Crichton Hall Bankend Road DUMFRIES  Telephone Number: 01387 244122 <a href="mailto:dhall2@nhs.net">dhall2@nhs.net</a>
Tayside	Stuart Storrie	Strategic Innovation & Change Manager	Ashludie Hospital Monifeith DD5 4HQ <a href="mailto:stuart.storrie@thb.scot.nhs.uk">stuart.storrie@thb.scot.nhs.uk</a>

## **Multi Agency Public Protection Arrangements**

### **A brief guide for NHS xxxxx staff**

#### **Introduction**

New Multi Agency Public Protection Arrangements (MAPPA) are being introduced in April 2007. Initially MAPPA will apply to registered sex offenders only, but in time violent offenders will also be covered. The aim of MAPPA is to ensure that effective multi-agency information sharing and risk management planning is applied to offenders in the community who are considered to pose a substantial risk of re-offending.

This brief guide sets out the main issues for health service staff. More detailed information can be found in the documents listed at the end.

#### **The Legislation**

Sections 10 and 11 of the Management of Offenders etc. (Scotland) Act 2005 oblige the Police, Local Authorities and Prison Service (they are called the 'responsible authorities') to jointly establish arrangements for the assessment and management of the risk posed by registered sex offenders, violent offenders under supervision and other offenders considered to pose a risk of serious harm. The Health Service is a responsible authority, and therefore under the same obligation, in relation to mentally disordered restricted patients who fall within those three categories.

A number of other agencies have a 'duty to co-operate' in the establishment and implementation of these arrangements. This duty to co-operate applies to the Health Service in relation to any offender covered by the legislation. This duty to co-operate applies only to the extent that it is compatible with the functions of the Health Service under other laws.

MAPPA are the way in which this legislation will be implemented.

## How will MAPPA work?

Initially MAPPA will only apply to registered sex offenders. There will be three MAPPA levels with each offender being allocated to a level depending on the current assessment of the risk of harm posed to other people.

- **Level 1: ordinary risk management.** This will be the level at which most cases will be managed. These will be cases where the risk is assessed to be relatively low and where the relevant responsible authority will have procedures in place to manage risk.
- **Level 2: local inter-agency risk management.** This level will apply to cases where the current risk is assessed to be higher. As well as the usual risk management procedures applied by the responsible authorities, these cases will be kept under review at regular Level 2 MAPPA meetings.
- **Level 3: Multi Agency Public Protection Panel (MAPPP).** This level will apply to the small number of cases who are assessed as posing a high risk and where the imminence or volatility of the risk is such that it requires a plan needing close cooperation at a senior level. This could be due to the complexity of the case, because of the unusual resource commitments required, or where there is a high likelihood of media scrutiny and/or public interest.

MAPPA will be administered and co-ordinated by MAPPA co-ordinators (see 'Important Contacts'). The responsible authority will notify the MAPPA co-ordinator about a case using a standard notification or referral form (Annex G) which includes an assessment of risk and a recommended MAPPA level. Where cases are allocated to level 2 or 3, arrangements will be made for the cases to be reviewed at MAPPA meetings.

Clearly the risk posed by an individual may change so the MAPPA level may change depending on circumstances.

### **MAPPA meetings**

For Level 1 cases there will be no specific review at a MAPPA meeting. The responsible authority will be expected to have processes in place to assess and manage risk on an ongoing basis. If circumstances change so there is an increased risk then the MAPPA level may increase.

There will be regular MAPPA Level 2 meetings. At these meetings the risk management plans prepared by the responsible authorities in co-operation with other agencies will be presented and reviewed. **[information outlining MAPPA level 2 meeting arrangements locally]**

MAPPA level 3 cases will be reviewed by a Multi Agency Public Protection Panel (MAPPP) consisting of senior staff from the agencies involved. These meetings will be convened when necessary (perhaps at short notice) and will consider an individual case in detail. Meetings will sometimes be convened at short notice (for example where there is a sudden increase in risk due to changes in circumstances).

It is important to realise that the work that has to be done to share information, assess risk and make risk management plans is not primarily done in MAPPA meetings. Regular discussions and meetings between the individuals involved in a case will be where most of this work is done. Risk Management Case Conferences (RMCCs) may be held to bring the individuals involved together to plan the management of risk in a specific case. The MAPPA meetings provide an administrative structure to keep the most concerning cases under review and to ensure the various agencies involved are working together to assess and manage risk.

### **Mentally disordered offenders who are subject to MAPPA**

A small minority of sex offenders have a mental illness or learning disability. In such cases individuals may receive a mental health disposal rather than going through the usual criminal justice process. Where an individual is convicted of a sexual offence (or found legally insane) and receives a mental health disposal then they are subject to the same sex offender notification requirements as other sex offenders and are also subject to MAPPA.

Health is the responsible authority (see 'The Legislation' above) where a person is convicted (or found legally insane) and is detained under a Compulsion Order with a Restriction Order (CORO) or a Hospital Direction (HD). Health is also the responsible authority where a person is transferred from prison to hospital during a sentence under a Transfer for Treatment Direction (TTD).

There are other mental health disposals available to the courts. A Compulsion Order (CO) can be made authorising compulsory treatment in hospital or the community (this has a similar effect to a patient being compelled under civil compulsory powers). Mental health treatment in the community may also be made a condition of a probation order. Health does not have responsible authority status in these cases, but should co-operate with other agencies, and where patients are subject to Compulsion Orders should co-operate in notifying cases to MAPPA co-ordinators where a move to the community is imminent.

Depending on their legal status some patients will move to prison when they no longer need hospital treatment. However the majority will be rehabilitated through the mental health system to the community, with ongoing treatment and support from mental health services. Where a patient is subject to a CORO they can only be discharged to the community by a Mental Health Tribunal. Usually strict conditions will be placed on patients on a CORO discharged to the community and the Scottish Executive closely monitors the management of these patients.

The Care Programme Approach (CPA) will be the process for the joint discussion and management of offenders who are the responsibility of Health. Risk assessment and management in hospital and the community are an integral part of CPA.

As patients progress towards periods of leave in the community the MAPPA Co-ordinator should be notified. If a Mental Health Tribunal is imminent which may discharge a patient unexpectedly then a contingency plan should be put in place and the case should be notified to the MAPPA co-ordinator. Most patients return to the community through a planned process of gradually increasing time in the community and the risk level at discharge should be such that they are managed at Level 1.

Through the CPA the initial MAPPA level should be set and the risk management plan should be put in place. This will be reviewed at a Level 2 MAPPA meeting if the patient is deemed to be at that level.

### The NHS and MAPPA offenders more generally

Registered sex offenders may have contact with the health service in a number of different contexts. This will include contact with mental health services where patients receive treatment voluntarily or under the Mental Health (Care and Treatment) (Scotland) Act 2003. Only a minority of sex offenders pose an ongoing risk of further sexual offending. Where a registered sex offender does have contact with the health service then the health service has a duty to co-operate with other agencies in terms of information sharing and contributing to risk management. In many cases there will be no need for health staff to know that an individual is a registered sex offender and there will be no need for any clinical information to be shared with other agencies. However where there are concerns about risk to staff or other patients then this should be communicated by the responsible authority to health service staff so the risk can be managed. In addition where health staff have information that is pertinent to risk management then this should be shared with other agencies (see 'Information Sharing' below).

If the police or criminal justice social work have concerns about the potential risk posed by a sex offender in a health setting then this will be communicated to a senior member of staff so appropriate arrangements to manage any risk to staff or patients can be put in place. **[add material on specific local arrangements]**

Where the person poses a risk to children then **[add material on specific local arrangements]**

If health staff have concerns about a sex offender in a health setting then it may be appropriate to contact **[add material on local police and MAPPA contacts]**

### Information sharing

The sharing of information that is pertinent to risk assessment and management is crucial in the management of sex offenders who are considered to pose an ongoing risk in the community. On the other hand patients receiving treatment by health service staff rightly expect that personal information will be treated confidentially. The law and professional guidance recognise that under certain circumstances information can be shared with others. The Management of Offenders etc. (Scotland) Act 2005 and MAPPA do not change the legal and professional obligations of staff with respect to patient confidentiality.



Processes and agreements need to be in place to respond appropriately to requests for information, and in turn there must be processes in place to deal appropriately with information shared with health service staff by other agencies.

Some principals relating to information sharing and confidentiality are:

- Personal information about patients should not usually be disclosed to other agencies without the patient's consent.
- Under certain circumstances such information can be disclosed without the patient's consent, but even then the patient should be informed of the disclosure.
- Information may be shared without a patient's consent where necessary to detect or prevent serious crime.
- Where it is urgently necessary to share information this can be done but the patient should be informed about this afterwards.
- Only where informing the patient about the disclosure would enhance the risk of harm or inhibit its investigation should the patient not be told.
- Where information is shared then only the minimum information necessary for the purpose should be shared, the third party (or parties) should be made aware that they need to keep this information securely and conditions should be set regarding the further dissemination of this information.
- However there should be a presumption that information will be shared where it is *necessary* and *legal* to do so.

Decisions regarding information sharing should be made by the clinician responsible for the patient's care, in collaboration with other health staff involved and, where appropriate, the patient. Where issues are complicated and further advice is required this should be sought from a clinical manager or Caldicott Guardian. Advice may also be sought from the MAPPAs health representatives. Urgent requests for information out of hours should be rare, and should be directed to the on-call responsible clinician.

Where a patient is no longer in contact with services, any request for information should be directed to the clinician who was responsible for the patient's care, a clinical manager or Caldicott Guardian.

## Related issues

### **Child Protection**

**[add brief local information and where to get more information]**

### **Vulnerable adults**

**[add brief local information and where to get more information]**

### **Information sharing**

**[add brief local information and where to get more information]**

### **Services for mentally disordered offenders**

**[add brief local information and where to get more information]**

**Management of violence and aggression**

**[add brief local information and where to get more information]**

## Glossary

**Caldicott Guardian:** A senior clinical manager within the health service who has a responsibility for confidentiality and information sharing within the organisation. **In NHS xxx the Caldicott guardians are ....**

**Compulsion Order (CO):** A disposal made by a criminal court where a person has been convicted of an offence or found *legally insane*. The patient may be detained in hospital (which would usually be the case initially) or subject to compulsory treatment in the community. A compulsion order operates in a similar way to a CTO.

**Compulsion Order and Restriction Order (CORO):** Where there is an ongoing risk of serious harm the court may make a restriction order in addition to a *Compulsion Order*. A patient on a CORO can only be transferred to another hospital or given periods of time outside hospital with the permission of the Scottish Executive. Where a patient is subject to a CORO they can only be discharged to the community by a Mental Health Tribunal. Usually strict conditions will be placed on a patient on CORO in the community and the Scottish Executive closely monitors the management of these patients. While a patient is on a CORO, either in hospital or conditionally discharged to the community, they are a *restricted patient*.

**Care Programme Approach (CPA):** A process for organising the multi-disciplinary care and treatment of patients with mental health problems. Regular review meetings are held where needs are identified and plans put in place to meet these needs. *Risk assessment* and *risk management* are an integral part of this process. New guidance to be issued in 2007 will make it mandatory for all *restricted patients* to be managed using CPA.

**Compulsory Treatment Order (CTO):** A civil order under the Mental Health (Care and Treatment) (Scotland) Act 2003 which allows for the compulsory treatment of a person with mental disorder either in hospital or the community.

**Duty to co-operate:** This is a duty imposed by the Management of Offenders etc. (Scotland) Act 2005 on agencies, including the health service, to co-operate with the police, local authorities and prisons in the implementation of arrangements for managing the risk posed by certain offenders. This duty to co-operate applies only to the extent that it is compatible with the functions of the Health Service under other laws.

**Hospital Direction (HD):** A disposal which may be made by a criminal court where a mentally disordered offender is convicted on indictment (i.e. a serious offence has been committed). The patient is detained in hospital and a prison sentence is imposed which runs in parallel. If the patient no longer requires treatment in hospital then they can go to prison to serve the rest of their sentence. If they remain in hospital at the end of the prison sentence then they must be released or if they need to be detained in hospital, then an application is made for a CTO. While a patient is on a HD they are a *restricted patient*.

**Integrated Case Management (ICM):** a process that co-ordinates how staff (from the Scottish Prison service, local authority criminal justice social work services and service providers such as addiction and employment services who operate within prison establishments) work together with prisoners during their sentence.

**Legally insane:** A small number of mentally disordered offenders are found unfit to plead (also known as insanity in bar of trial) or are acquitted due to insanity at the time they committed an offence. Legally such individuals are regarded as insane, even though this is not a term used by mental health professionals. In these cases courts may make a mental health disposal and in most cases individuals are detained in hospital.

**Multi-Agency Public Protection Arrangements (MAPPA):** Arrangements to keep under review the assessment and management of risk in certain violent and sexual offenders in the community.

**MAPPA co-ordinator:** There are two such posts in the Lothian and Borders area. These individuals are responsible for administering *MAPPA*. They act as points of contact regarding *MAPPA* and ensure that arrangements are in place for offenders to be reviewed at appropriate meetings.

**MAPPA health representative:** It is important that the health service is represented on *MAPPA* steering groups and at *MAPPA meetings*. Senior managers and clinicians need to be involved.

**MAPPA level:** This is determined by the assessment of the current level of risk posed by the offender and the *risk management* strategies required. There are three *MAPPA* levels (1 for the lowest risk offenders, 2 for an intermediate group, and 3 for the highest risk offenders). *MAPPA* level may change (up or down) depending on changes in the assessment of risk.

**MAPPA meeting –** Specific meetings will be held to review the risk management plans for level 2 and level 3 cases. For level 2 cases there will be regular review at monthly meetings where a number of cases will be considered. For level 3 cases there will be a specific dedicated meeting (see *MAPPP*).

**Multi-Agency Public Protection Panel (MAPPP):** The panel convened to consider in detail the risk management of the highest risk offenders who are managed at *MAPPA* level 3.

**Registered sex offender (RSO):** A person convicted of a sexual offence or found *legally insane* having been charged with committing a sexual offence who is subject to notification requirements under the Sexual Offences Act 2003. This requires certain offenders to report to the police and give certain information to the police when they are living in the community.

**Responsible Authority:** These are the lead agencies in the management of sex offenders: the police, local authorities and the prison service. Health is a responsible authority in the case of restricted patients. The responsible authorities are obliged by the Management of Offenders etc. (Scotland) Act 2005 to establish *MAPPA*.

**Restricted patient:** A mentally disordered offender subject to a *CORO* (either in hospital or conditionally discharged to the community), a *HD* or a *TTD*. For a restricted patient to be transferred to another hospital or to be allowed any time out of hospital permission must be sought by their psychiatrist from the Scottish Executive.

**Risk assessment:** This is the process by which an assessment is made to ascertain the likelihood that an individual will commit a harmful act. Risk assessment in offenders requires information on the person's background, offending history and current circumstances. Certain tools and guides can be used to aid this process. A comprehensive assessment will consider the potential likelihood, imminence, frequency and severity of future offending. No risk assessment can be 100% accurate, but a properly conducted assessment should allow valid conclusions about the likely risk and factors that need to be addressed in any *risk management* plan. The level of risk posed by an individual may change depending on changes in circumstances, so risk assessments need to be reviewed on an ongoing basis.

**Risk management:** *Risk assessment* should lead to the formulation of a plan to manage risk. This may involve monitoring, supervision, treatment, victim safety planning and placing certain restrictions on offenders. Risk management will also involve putting contingency plans in place for situations that might arise and having ongoing review of *risk assessment* and management plans.

**Sex Offender Liaison Officer (SOLO):** Provides strategic coordination in relation to housing sex offenders within any local authority.

**Transfer for Treatment Direction (TTD):** A procedure under the Mental Health Act which allows a sentenced prisoner with a mental disorder to be transferred to a psychiatric hospital for treatment. If the patient no longer requires treatment in hospital then they can go back to prison to serve the rest of their sentence. If they remain in hospital at the end of the prison sentence then they must be released or if they need to be detained in hospital, then an application is made for a *CTO*. While a patient is on a *TTD* they are a restricted patient.

## Important Contact Details

[Add local information]

### **MAPPA**

*MAPPA Co-ordinator:*

*MAPPA Administrator:*

### **Police**

*Sex Offender Management Unit:*

*Sex Offender Liaison Officer:*

**Local Authority** *Criminal Justice Services*

**Local Authority** *Child and Families Services*

### **Housing**

Sex Offender Liaison Officer

### **Health Service**

*MAPPA representatives*

*Child Protection*

*Forensic Mental Health Services*

*Forensic Learning Disability Services*

### **Scottish Prison Service**

## Further helpful information

### **Statutes**

Data Protection Act 1998

<http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm>

Human Rights Act 1998

<http://www.opsi.gov.uk/ACTS/acts1998/19980042.htm>

Criminal Justice (Scotland) Act 2003

<http://www.opsi.gov.uk/legislation/scotland/acts2003/20030007.htm>

Mental Health (Care and Treatment) (Scotland) Act 2003

<http://www.opsi.gov.uk/legislation/scotland/acts2003/20030013.htm>

Sexual Offences Act 2003

<http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm>

Management of Offenders etc. (Scotland) Act 2005

<http://www.opsi.gov.uk/legislation/scotland/acts2005/20050014.htm>

Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

<http://www.opsi.gov.uk/legislation/scotland/en2005/2005en09.htm>

### **Guidance and Reports**

British Medical Association (1999) Confidentiality and Disclosure of Health Information. London: British Medical Association.

<http://www.bma.org.uk/ap.nsf/Content/Confidentialitydisclosure>

Forensic Mental Health Services Managed Care Network (2006) Review of Care Programme Approach Guidance for Restricted Patients in Scotland (Draft Guidance for Consultation)

[http://www.forensicnetwork.scot.nhs.uk/documents/reports/CPA%20Consultation/Draft%20for%20Consultation%20inc%20appendices\\_.pdf](http://www.forensicnetwork.scot.nhs.uk/documents/reports/CPA%20Consultation/Draft%20for%20Consultation%20inc%20appendices_.pdf)

General Medical Council (2004) Confidentiality: Protecting and Providing Information. London: GMC.

<http://www.gmc-uk.org/guidance/library/confidentiality.asp>

Home Office and National Probation Service for England and Wales MAPPA guidance

<http://www.probation.homeoffice.gov.uk/files/pdf/MAPPA%20Guidance%20Update%202004.pdf>

Information Sharing Steering Group (2005) Concordat: sharing information on sex offenders. Edinburgh: Scottish Executive

<http://www.scotland.gov.uk/Publications/2005/10/27174205/42063#2>

Royal College of Psychiatrists (2004) Psychiatrists and Multi-Agency Public Protection Arrangements. Guidelines on representation, participation, confidentiality and information exchange. London: Royal College of Psychiatrists.

<http://www.rcpsych.ac.uk/members/currentissues/publicprotection.aspx>

Royal College of Psychiatrists (2000) Good Psychiatric Practice: Confidentiality and Information Sharing. Council report CR133. London: Royal College of Psychiatrists.

[www.rcpsych.ac.uk/publications/cr/cr85.htm](http://www.rcpsych.ac.uk/publications/cr/cr85.htm)

Scottish Executive (2003) NHS Code of Practice on Protecting Patient Confidentiality. Edinburgh: Scottish Executive.

<http://www.confidentiality.scot.nhs.uk/publications/6074NHSCode.pdf>

Scottish Executive Health Department (2005) Memorandum of Procedure on Restricted Patients. Edinburgh: Scottish executive.

<http://www.scotland.gov.uk/Publications/2005/10/0584334/43364>

Scottish Executive (2006) Reducing Reoffending: National Strategy for the Management of Offenders. Edinburgh: Scottish Executive.

<http://www.scotland.gov.uk/Publications/2006/05/19094327/9>

Scottish Executive (2006) Implementation of the Multi Agency Public Protection Arrangements (MAPPA) in Scotland. Circular No JD/15/2006. Edinburgh: Scottish Executive.

<http://www.scotland.gov.uk/Publications/2006/12/mappa15-2006>

Scottish Executive (2007) Implementation of the Multi Agency Public Protection Arrangements (MAPPA) in Scotland. Circular No JD/15/2006. Edinburgh: Scottish Executive

<http://www.scotland.gov.uk/Publications/2007/03/circjd1506updmar07>

Scottish Executive (2007) Implementation of the Multi Agency Public Protection Arrangements (MAPPA) in Scotland. Addendum to Circular 15/2006 - Multi Agency Public Protection Arrangements (MAPPA) in Scotland

<http://www.scotland.gov.uk/Publications/2007/05/circ152006add>

Scottish Executive Health Department Letter 19/2007

[http://www.sehd.scot.nhs.uk/mels/HDL2007\\_19.pdf](http://www.sehd.scot.nhs.uk/mels/HDL2007_19.pdf)

The Bichard Inquiry Report (2004). London: Stationary Office

<http://www.bichardinquiry.org.uk/>

## **Organisations**

Risk Management Authority

<http://www.rmascotland.gov.uk>

Scottish Government

<http://www.scotland.gov.uk/Home>

NHS Lothian

<http://www.nhslothian.scot.nhs.uk/>

Lothian and Borders Police

<http://www.lbp.police.uk/>

Criminal Justice SW

[http://www.edinburgh.gov.uk/internet/social\\_care/criminal\\_offenders/CEC\\_criminal\\_justice\\_services](http://www.edinburgh.gov.uk/internet/social_care/criminal_offenders/CEC_criminal_justice_services)





## APPENDIX C

### **Mental Health Division – role of Scottish Ministers and the restricted patient casework team**

1. The role of Scottish Ministers and the restricted patient casework team in Branch 4 is based on the provisions contained in the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act). Scottish Ministers take responsibility for certain types of mentally disordered offenders (restricted patients). The following outlines the relevant background and the provisions of the 2003 Act.

2. Where an offender has been convicted in the Sheriff Court or High Court of an offence punishable by imprisonment it is possible for a court to make a form of mental health disposal known as a compulsion order. The purpose of the compulsion order is to ensure that the offender receives medical treatment by compulsory measures whether in the community or by means of detention in hospital for the offender's mental disorder". A Compulsion Order is made under S57A of the Criminal Procedures (Scotland) Act 1995 (the 1995 Act). In order to impose a compulsion order the court has to be satisfied on the written or oral evidence of two medical practitioners that the offender is suffering from mental disorder, that there is medical treatment available and that if the offender were not provided with such medical treatment there would be a significant risk to the health, safety or welfare of the offender or to the safety of any other person and that the making of a compulsion order is necessary – see S57A(1)-(4) of the 2005 Act.

3. The patient may be discharged by the Responsible Medical Officer, the Mental Welfare Commission or by a Mental Health Tribunal to which he/she may apply during each period of detention after the first six months have elapsed. Scottish Ministers have no responsibility for a patient who is subject only to a compulsion order made under S57A of the 1995 Act.

#### Scottish Ministers Responsibilities under the 2003 Act

4. Scottish Ministers are responsible only for mentally disordered offenders subject to compulsion order **and** restriction orders (CORO), transfer for treatment directions (TTD) or hospital directions (HD) under the Criminal Procedure (Scotland) Act 2005. In addition all patients on remand or Interim Compulsion Orders have "restricted" status for the duration of the remand period or pre-sentencing stage. Such offenders are generally collectively known as "restricted patients". The next few paragraphs outline how the main provisions of the Act that the MHD deals with work.

#### Compulsion Orders (S57A) and Restriction Order (S59) of the 1995 Act

5. Section 59 of the Act enables a Court when it makes a Compulsion Order to make also a restriction order for the protection of the public from serious harm and it is this which places responsibilities on Scottish Ministers. The effect of this order is that the patient will be detained without limit of time. It precludes the patient's transfer from one hospital to another (CORO patients) or between hospital and prison (TTD and HD patients) and the granting of suspension of detention without Scottish Ministers' consent.

6. Scottish Ministers have no role in the discharge in to the community of restricted patients although they are a party to proceedings and may make representations in respect of public safety. The role of the Mental Health Tribunal in relation to restricted patients is outlined at paragraphs 12-16. When a CORO patient is granted conditional discharge they remain a restricted patient and are subject to supervision in the community by a Responsible Medical Officer (RMO) and a Mental Health Officer (MHO). Both the RMO and MHO are expected to report back regularly to Scottish Ministers on the patient's progress. Scottish Ministers may by warrant recall a conditionally discharged patient and after recall a patient once again becomes subject to detention in hospital with restrictions.

#### Transfer for Treatment Directions (S136) of the 2003 Act

7. Sentenced Prisoners: Section 136 of the 2003 Act empowers Scottish Ministers in certain circumstances to direct that a sentenced prisoner who is found to be suffering from mental disorder to a degree which warrants detention in hospital under the Act, should be removed from prison to hospital. All transfer for treatment direction prisoners are treated as restricted until the expiry of their prison sentence or released on life licence. If it ceases to be appropriate for a prisoner to remain in hospital he will be returned to prison.

#### Hospital Direction (S59A) of the 1995 Act

8. When sentencing for an offence punishable with imprisonment, the Court can pass a prison sentence and simultaneously direct the offender's admission to hospital. In case-working terms, it is as though the court were making a S136. If a patient on a Hospital Direction recovers sufficiently he/she will be transferred to prison to serve the balance of his/her sentence.

#### Disposal of case where Acquitted found to be insane (S57(2)(a) and (b) of the 1995 Act

9. These provisions deal with accused persons who, when they appear before the Court are found after an examination of the facts, to have done the act in question but are found not guilty by reason of insanity or unfit to plead. The court has a wide range of disposals and can choose

- to make a Compulsion Order
- in addition to making an order as above, make an order that the person shall be detained without limit of time
- make an order (which shall have the same effect as a guardianship order)
- make a supervision and treatment order
- make no order

The Crown Office retain the right to re-indict a patient found "unfit to plead" once he/she recovers sufficiently to stand trial.

#### Powers of Scottish Ministers

10. The Scottish Ministers' powers are derived from the position that the control of patients who are admitted to hospital following court proceedings and who are thought to be potentially dangerous should be vested in a central authority which has special regard to the protection of the public. In exercising these powers, the Scottish Ministers are responsible

for protecting the public from unjustified risk. So case-working decisions taken in Branch 4 of the Mental Health Division in consultation with the Psychiatric Adviser, need to give priority to public safety while supporting the objectives of rehabilitation. Responsibility for the treatment of patients rests with the consultant psychiatrist and other members of the care team, not Scottish Ministers. However, we need to be aware of the treatment programme and a patient's progress in order to fulfil our statutory duties.

11. In relation to all restricted patients the Scottish Ministers consent is required for:

- Suspension of detention into the community
- Transfer between hospitals (CORO)
- Transfer between hospital and prison (TTD and HD)
- Recall of a conditionally discharged patient to hospital (CORO)

### Mental Health Tribunal

12. Under the Mental Health (Care and Treatment) (Scotland) Act 2003 a detained restricted patient may apply to have his case heard by a Mental Health Tribunal roughly once each year. If he does not apply, his case will be referred by Scottish Ministers to a Mental Health Tribunal every 2 years (S189 and S213). A restricted patient (CORO) may also appeal against recall from conditional discharge (S204); against variation of conditions of discharge (CORO); transfer from prison to hospital (TTD); against being detained in conditions of excessive security (S264 – currently those detained in State Hospital only and includes those on COROs, TTDs and HDs); transfer between hospitals (all); and cross border transfers (all).

13. Where a Mental Health Tribunal directs the conditional discharge of a patient (S193(7)) it may under S195 defer that direction until it is satisfied that adequate arrangements have been made for the discharge to take place. It may impose any conditions on discharge as it considers appropriate. After a Tribunal has directed the conditional discharge of a patient, Scottish Ministers may vary those conditions under S200.

14. The Mental Health Tribunal may under S193 revoke the compulsion order (S193(4)) which has the effect of an absolute discharge or it may revoke the restriction order (S193(5)) leaving the compulsion order in place. In both cases Scottish Ministers no longer have a decision-making role in relation to the patient.

15. Transferred prisoners may appeal against the imposition of a S136 transfer for treatment direction (S214). If successful Scottish Ministers will be directed to revoke the direction and return the prisoner to prison. A transfer for treatment direction ceases to have effect once a prisoner is released under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. In the event the prisoner continues to require treatment in hospital he may be detained under the civil provisions of the 2003 Act.

16. A Tribunal has no power to direct the recall of a conditionally discharged patient, nor to direct the leave from hospital or the transfer to another hospital. Although the Tribunal may grant an order under S264 that the patient is detained within conditions of excessive security within the State Hospital, the consent of Scottish Ministers and the managers of the hospital is required before transfer can take effect.

MHD Contact: Rosie Toal (e-mail: [Rosemary.Toal@scotland.gsi.gov.uk](mailto:Rosemary.Toal@scotland.gsi.gov.uk))



## **Part 9**

### **STRATEGIC MANAGEMENT, PERFORMANCE MANAGEMENT AND QUALITY ASSURANCE**

#### **Strategic Management**

1. MAPPA implementation teams have been established within the area of each Community Justice Authority to ensure the effective establishment and implementation of the arrangements between agencies for the delivery of the model. However, once the MAPPA is established it will be crucial that arrangements are in place between the responsible authorities at a senior and strategic level to meet the requirements of the legislation to review the operation of the MAPPA.

#### Legislation

2. Sections 11(1) and (2) of the Management of Offenders (Scotland) Act 2005 require the responsible authorities to keep the arrangements established under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient. Additionally there is a requirement to publish an annual report (Annex I) to be submitted to the Community Justice Authority for onward submission to the National Advisory Board.

3. Strategic Management of the MAPPA is not only necessary to fulfil the annual report function but is critical to the planning management of performance, review and development of the MAPPA in each area. Performance measurement and quality assurance frameworks, covered later in this section, will be necessary to support strategic management arrangements.

4. It will be for the responsible authorities to determine how the strategic management arrangements might operate and there may well be similar arrangements or models in place covering other joint agency strategic functions. Whilst there is no legislative requirement to involve other agencies the responsible authorities might consider their involvement is a necessary element to reflect the representation from key agencies involved within the MAPPA. It should be noted that involvement of other agencies does not fall within the role under the duty to co-operate.

5. The MAPPA arrangements fit within the strategy for reducing reoffending therefore the planning function of the Community Justice Authority should also be taken into account and the involvement of the Chief Officer of the CJA will be necessary.

6. The strategic management arrangements for the MAPPA should also ensure that there are links made with other public protection forums such as child protection committees.

7. The strategic management arrangements should reflect a strong understanding of the mechanisms for effective and efficient public services. The Good Governance Standard for Public Services (Office for Public Management and the Chartered Institute of Public Finance and Accountancy, 2004) sets out "... six principles of good governance that are common to

all public services and are intended to help those with an interest in public governance to assess good governance practice”<sup>21</sup>. The six principles state that good governance means:

1. Focusing on the organisation’s purpose and outcomes for citizens and service users
2. Performing effectively in clearly defined functions and roles
3. Promoting values for the whole organisation and demonstrating the values of good governance through behaviour
4. Taking informed, transparent decisions and managing risks
5. Developing the capacity and capability of the governing body to be effective
6. Engaging stakeholders and making accountability real.

8. This practice builds on the Nolan Committee’s *Seven Principles for Public Life*: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership<sup>22</sup>.

9. In the development of the strategic management arrangements it is important that there is a common baseline between the arrangements across the country as follows:

- Monitoring, review (on a regular basis) and evaluation of the operation of the MAPPA and the MAPPP.
- Establishing effective connections with other public protection arrangements e.g. child protection committees
- Preparing and publishing the annual report and promoting the work of the MAPPA in the area of the CJA.
- Planning the long term development of the MAPPA in the light of the reviews of the arrangements, taking into account operational and legislative changes.

### Annual report

10. The preparation and publication of the Annual report will be an important part of the strategic arrangements for the MAPPA. The intention is for the role of the MAPPA and the public protection arrangements for each area across Scotland to provide a transparent mechanism for raising public awareness and understanding of public protection issues.

11. A model annual report is available at **Annex I** providing detail of the baseline information required to be incorporated for each MAPPA area. The report provides the platform for the publication of statistics on sex and violent offenders through the 3 MAPPA levels. The availability of VISOR will provide a central database for the collation of various statistics for inclusion in the annual report and the wider strategic management of the MAPPA.

12. The Annual report is to be published within the area of the local authorities and it is expected that one Annual report should be published for the MAPPA arrangements within each CJA. The report should then be submitted to the Community Justice Authority for

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<sup>21</sup> The Independent Commission for Good Governance in Public Services report “The Good Governance Standards for Public Services” is available on the web at [http://www.opm.co.uk/icggps/download\\_upload/Standard.pdf](http://www.opm.co.uk/icggps/download_upload/Standard.pdf).

<sup>22</sup> More information on the seven principles and the Committee on Standards in Public Life is available at <http://www.public-standards.gov.uk/>.

submission to the Scottish Ministers under section 3(11) of the Management of Offenders etc (Scotland) Act 2005.

### Monitoring and Evaluation

13. Monitoring and evaluation will be critical not only for the preparation of the Annual Report but to the review and development of the MAPPA functions. The analysis of information will allow MAPPA performance to be assessed and validated and appropriate action to be taken.

### **Performance Management and Quality Assurance**

14. Public protection is the main objective of the MAPPA and the responsible authorities and the duty to co-operate agencies are expected to retain this at the heart of their deliberations. Defensible decision making provides clarity and transparency in the risk assessment and risk management process. The MAPPA model provides a consistent approach to that process.

15. The responsible authorities and the duty to co-operate agencies will have quality assurance systems in place to monitor, evaluate, report on and manage their own performance generally. It is equally important that quality assurance systems are put in place for the **MAPPA process** and to meet the requirements of the Management of Offenders Act 2005, which include an obligation on the responsible authorities to keep their arrangements under review and also to publish an annual report. Strategic management of the MAPPA is therefore a fundamental function for the responsible authorities.

16. The purpose of this section is to assist in the development of the strategic management function. It should assist with the performance management and quality assurance tasks that are part of this and which need to be built into the MAPPA process.

### **Quality Assurance**

17. It is generally accepted that quality assurance depends on the following key components:

- Setting standards
- Reviewing and monitoring performance
- Measuring outcomes
- Implementing Change
- A framework of accountability
- Setting Standards

18. The MAPPA is an intensive joint working arrangement for high risk sexual and violent offenders. There are minimum standards for the tasks that need to be completed within set timescales in the MAPPA process – e.g. in respect of the notification and referral to the MAPPA co-ordinator (see following table). These are there to ensure that there is a consistent approach for every case. It is important to recognise that these benchmarks refer to minimum standards and should not therefore be interpreted as suggesting a low level service.

Level 2 meeting must be held within 20 working days of referral
Level 3 MAPPP must be held within 5 working days of referral
Stage 1 notification for community sentences must be made within 3 working days of receipt of community sentence
Stage 2 referral of a community sentence within 5 working days of stage 1 notification
Information exchange search and response within 5 working days
Minutes of level 2&3 meetings should be produced within 5 working days

- Reviewing and Monitoring Performance

19. Performance management starts with performance monitoring; that is to say that before management decisions can be made about the MAPPA, it is necessary to have appropriate data on the inputs, outputs and outcomes which can be used for the purpose.

- Data Systems

20. In terms of the MAPPA, Visor will be the main database from which standard information on offenders will be gathered. However, there will be a need to engage with the responsible authorities and duty to co-operate agencies in order to gather other complimentary data.

- Data Gathering

21. Gathering data for performance monitoring, review and reporting purposes will be a common theme/activity for the responsible authorities. Data will be required for an analysis of the operation of the MAPPA. It will also be required for the annual report and the planning of service provision within the Community Justice Authority. The frequency of the data gathering cycle may vary depending on the specific purpose, as will the type of data required. For example, the model annual report provides a standard baseline of the data that should be collected for that purpose.

- Measuring Outcomes

22. Having gathered all the appropriate data, it should be thoroughly analysed to extrapolate the relevant information. The responsible authorities will wish to ascertain whether the MAPPA has met the standards, aims and objectives laid out in this guidance, for example, around timescales for referrals; the effective and appropriate sharing of information with other agencies; and attendance at MAPPA meetings. A key consideration will be whether the MAPPA process impacts positively in achieving better public protection.

- Implementing Change

23. Analysing the data allows the responsible authorities to determine how well the MAPPA is functioning within their specific CJA area. The analysis may provide evidence that there is a need for the responsible authorities to change their practice, either as individual



agencies or as a group, to fit with the MAPPA model. In such circumstances, the responsible authorities may find it prudent to develop a plan of work to implement the required changes.

- Framework of Accountability

24. The effectiveness of collaborative working within the MAPPA will be enhanced when every member:

- understands the purpose of the task
- is aware of their role and responsibility
- is committed to delivering the required outcomes to improve public protection.

25. With this in mind, systems should be put in place which assure the quality of services provided by the responsible authorities and duty to co-operate agencies. There should also be processes and procedures for feeding back on performance which are geared towards improving service delivery. Lastly, these systems should be transparent, easily understood and accessible.

### **Accountability - Roles and Responsibilities**

26. Roles and responsibilities around the MAPPA fall into two parts:

- the roles and responsibilities of the responsible authorities and duty to cooperate agencies in the *case by case* decision making MAPPA process; and
- the roles and responsibilities of those agencies that play a part in the wider strategic management of the MAPPA.

27. The MAPPA Co-ordinator is responsible for gathering data for the production of the annual report and quality assuring the MAPPA process. The data required for quality assurance and measuring performance will be both quantitative and qualitative in nature and will include:

- offender numbers – how many and at what MAPPA level;
- detailed breakdown of those referred to the MAPPA;
- licence and order types;
- enforcement action taken;
- those who are managed by the MAPPA who have been charged with a further serious offence;
- information from case sampling exercises, which may help identify good practice or operational and organisational difficulties.

28. The analysis of data is to be undertaken, in the first instance by the MAPPA Co-ordinator. The analysis of the data will assist the responsible authorities at a strategic level in their review and validation of the MAPPA's effectiveness. This will allow for some benchmarking and the opportunity for timely intervention where issues are identified.

## **Conclusion**

29. The effectiveness of the MAPPAs relies on the support, direction and the commitment of the responsible authorities and the duty to co-operate agencies. Public protection is enhanced when these agencies co-operate, share information, plan interventions and keep their practice under review.

## Part 10

### Transfer of MAPPA Cases

#### Offenders subject to statutory supervision transferring within Scotland

1. The arrangements for transfer within Scotland of offenders subject to supervision on licence are set out in *National Standards and Objectives for Social Work (Chapter 9)* and these should be followed when a transfer within Scotland is to take place.
2. The following principles should be followed in all transfer cases:
  - The over-riding consideration in relation to case transfers should be the **protection of the public**.
  - The need to consider the wider picture - there may be real benefits in transferring the offender out of a particular area e.g. victim issues.
  - The need to ensure that where national standards for reporting and enforcement apply that these are maintained regardless of the transfer.
  - The provision of seamless supervision of offenders in the community.
  - The sharing of relevant information when the offender transfers.
3. MAPPA does not have the authority to refuse transfer. This remains a social work decision. However where an offender is on an order with restrictive conditions, MAPPA can have an important role to play in ensuring that transfers are conducted in such way that risks are managed as effectively as possible.
4. Other factors to consider:
  - **Reasons for not approving a transfer** - These have to be based on public protection factors and demonstrate that the decision is based upon a thorough risk assessment and is proportionate to the identified risks. It is essential that the decision is well recorded and is communicated clearly to the offender and is reported to Scottish Ministers as required by National Standards.
  - **Home visits** - Whenever an offender changes their address a home visit must be undertaken. This must take place prior to transfer to ensure that it is a suitable address.
  - **National Standards** - It is essential that national standards are followed with cases being allocated as required, appointments being kept as required and breach action being taken if necessary.
  - **ViSOR** – ViSOR protocols and national standards must be followed with cases being transferred promptly between areas and all contacts and partners being updated as required.
5. In respect of transfer of a MAPPA offender subject to supervision, the decision as to whether the case should be transferred will first be taken by criminal justice social work. They may choose to consult with colleagues in other agencies to assist in their decision making but it has to be a criminal justice social work service decision. It is important that where the offender is subject to social work supervision as well as the notification requirements of the Sexual Offences Act 2003 that the supervising officer ensures that the

police are aware of the request to move address and are consulted as part of the decision making process.

6. For example, where an offender is being managed by Area A at MAPPA level 2 or 3 and a change of address to Area B is being considered, the supervising officer in consultation with their manager in Area A should assess the risks associated with the proposed move and decide whether to approve it in line with the requirements of National Standards. Once the decision has been taken, Area A will consider whether it is necessary to hold a MAPPA meeting prior to transfer to identify the potential risks associated with the change of address and how these could be managed. The supervising officer in Area A will contact the supervising officer in Area B to discuss transfer and where appropriate the issues discussed at the MAPPA meeting. Once Area B has agreed to accept transfer it will hold a MAPPA meeting. The supervising officer or manager in Area A should attend this meeting, either in person or by video/telephone conference.

### **Registered Sex Offenders not subject to supervision**

7. Category 1 registered sex offenders must notify the police of their home address within 3 days of date of conviction or release from custody.

8. 'Home address' means the main/sole residence of the offender. If they have more than one address they must nominate one as the main address. If they are homeless then they have to provide details of a place where they can most frequently be found. Any change of address must be notified to the police within 3 days and their address details must be updated once a year to the police. Registered sex offenders are also required to notify the police if they are to be away from their home address for 7 days or more, whether that is 7 consecutive days or 7 days within any 12 month period, providing details of their alternative address. If this is outside the managing police area, they will notify the receiving police area and make them a partner to the ViSOR record during the time the offender is staying in their area.

9. If a registered sex offender moves to another police area without informing their managing area, the receiving police force will notify the managing police force that the registered sex offender has moved into their area and notified a change of address. The managing police force will:

- make the receiving police force a partner to the ViSOR record;
- request that a home visit is made to confirm that the registered sex offender is actually living at the address; and,
- where relevant, notify the offender manager of the change of address.

10. Once the address has been confirmed, the managing police force will transfer the ViSOR record to the receiving police force. The receiving police will follow Standard Operating Procedures for the assessment of risk etc by the registered sex offender and consideration of referral to the MAPPA within that area.

### **Cross Border Transfers**

11. It is not uncommon for offenders to move between countries within the United Kingdom. When the transfer is between Scotland and:

- England / Wales

- Northern Ireland
- Isle of Man
- Channel Islands

the process is more complex as legislation is different between the countries involved. General principles relating to cross border transfer of supervision are described below. The guidance then considers the issues around transfer of MAPPA cases between England / Wales and Scotland. MAPPA is not currently in place in Northern Ireland, Isle of Man or the Channel Islands.

## General Principles

12. Schedule 1 of the Crime (Sentences) Act 1997 contains the main provisions for transfer of supervision for those offenders subject to release on licence. Transfers of supervision are made on an '**unrestricted**' or '**restricted**' basis.

13. The distinction between restricted and unrestricted transfers is important because it determines the relevant law that is applicable following the transfer and may affect the duration of supervision and action in the event of breach of licence or any order.

14. A request which meets the transfer criteria and where there is no effect on the sentence (either in terms of a reduction or increase in time to serve) or on any post release supervision requirements, will normally be granted on an unrestricted basis. In an **unrestricted transfer**, the law of the receiving jurisdiction should apply. The offender is treated as if their supervision period had been the result of a sentence imposed in the jurisdiction to which they have been transferred. The offender will undergo the remainder of the supervision in the receiving jurisdiction as if it had been an equivalent period of supervision directed to be undertaken in the receiving jurisdiction. The supervision will be subject to the statutory and other provisions applicable in the receiving jurisdiction. This is the type of supervision that occurs between areas in England / Wales and in Scotland as it is possible to replicate the original supervision requirements.

15. Where an unrestricted transfer is not appropriate the Secretary of State or Scottish Ministers or other relevant authorities may transfer the supervision of the offender on a restricted basis. In a **restricted transfer**, the law of the sending jurisdiction will continue to apply and the offender will be subject to the same duration of supervision under the same conditions as they would have been in the sending jurisdiction, as well as to any other conditions specified. The receiving jurisdiction will administer the supervision in the sense that the offender will be reporting to a supervising officer in the receiving jurisdiction. However, in the case of a restricted transfer, breach proceedings must take place under the sending jurisdiction, for example in the case of a transfer from England to Scotland, breach action would follow English law.

16. As legislation now differs quite considerably between England / Wales, Scotland, Northern Ireland, Isle of Man and Channel Islands the vast majority of transfers of supervision must be agreed and made on a **restricted** basis.

17. If an offender is undergoing or about to undergo supervision in any part of the UK, formal approval must be sought of the Secretary of State or their equivalent (of the sending jurisdiction), or where the sending jurisdiction is Scotland, the Scottish Ministers may, on the

offender's application, make an order for that supervision to be transferred to another part of the UK. Serving prisoners may also apply to be transferred.

18. All transfers must be fully discussed and agreed with the receiving area prior to transfer taking place and this must be at Assistant Chief Officer (or equivalent) and Criminal Justice Service Manager (or equivalent).

19. Before an order for transfer is made, the sending and receiving probation and local authority criminal justice social work jurisdictions are required, using the fullest information available, to consider:

- whether or not licence conditions can be enforced; and
- the ability of the receiving jurisdiction to manage the supervision.

[Note: Scottish Executive **Justice Department Circular 6/1999** and **Probation Circular 52/97** provide full guidance on the arrangements for transfer of supervision.]

20. Key points to remember:

- Check the legislation regarding transfer and refer to the relevant guidance, remember the transfer is likely to be restricted and the process can be time consuming;
- Contact the receiving area to discuss the case with them prior to transfer – **this must be at senior manager level** – Assistant Chief Officer and Criminal Justice Service Manager;
- The receiving area **must** confirm that they are able to manage the case to the necessary requirements prior to transfer being agreed;
- Ensure all appropriate paperwork is sent to the receiving area within 5 working days of transfer being agreed. This should include offender assessment, including risk assessment, risk management plan, sentence plan, pre sentence report, parole report, victim details and risks to potential victims, copy of original licence/ order and requirements as well as the amended licence/order.
- Transfer on licence has to be agreed with the offender manager / supervising officer prior to the transfer taking place and agreement to transfer can be refused;
- Moving without notifying the offender manager / supervising officer constitutes a breach of the order/licence and the appropriate action must be taken.

### **MAPPA co-operation and sharing information between England / Wales and Scotland**

21. This section is intended to set out the principles for the liaison and exchange of information between the Responsible Authorities and MAPPA in England / Wales and Scotland for offenders who fall within the offender categories defined by **sections 327 of the Criminal Justice Act 2003 and 10 of the Management of Offenders etc. (Scotland) Act 2005**.

#### **Responsible Authorities**

22. There are differences in who forms the Responsible Authority, which are as follows:

**England and Wales** – The Police, Probation and Prison Services

**Scotland** – The Scottish Prison Service, local authorities (Criminal Justice Social Work) and the police, with the Health Service being included for Mentally Disordered Offenders who are restricted patients.

23. MAPPA arrangements can apply to offenders:

- Subject to supervision on or following release from prison
- Subject to a community disposal or alternative to custody
- No longer or not subject to Probation or Criminal Justice Social Work supervision but subject to the notification requirements of the Sexual Offences Act 2003
- Subject to the notification of the Sexual Offences Act 2003 only, including subject to SOPO or RSHO
- Who by virtue of previous convictions are still considered to pose a threat.

### **Cross Border Transfers**

24. Offenders who are subject to MAPPA arrangements in the community and are under supervision on licence/community order by the National Probation Service, Youth Offending Team or Local Authority Criminal Justice Social Work in Scotland will be subject to the cross border transfer provisions described above and can **only be transferred with the agreement of both the sending and receiving jurisdiction**. Given the serious level of risk MAPPA offenders present, particularly at level 2 and 3, it is essential that the process is followed properly, that full details and information are appropriately shared and that MAPPA meetings involve the sending area, either in person or through video/telephone conferencing.

25. Where a MAPPA offender moving between England / Wales and Scotland is not under supervision by the probation service or criminal justice social work and therefore not subject to the cross border transfer legislation, it will be for the responsible authority in one area to make contact with the equivalent responsible authority in another area to provide relevant information. Thereafter it is for the receiving responsible authority to make the arrangements for referral to the MAPPA in their area.

26. MAPPA offenders have their details recorded on ViSOR and once a transfer has been agreed the necessary transfer must also take place on ViSOR. From April 2008 this will also include all MAPPA documentation relating to level 2 and 3 meetings which have been held in England and Wales.





## ANNEXES

### Annex A

#### *Assessing and managing risks posed by certain offenders*

#### **10 Arrangements for assessing and managing risks posed by certain offenders**

- (1) Subject to subsection (11), the responsible authorities for the area of a local authority must jointly establish arrangements for the assessment and management of the risks posed in that area by any person who—
  - (a) is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c.42);
  - (b) has been convicted on indictment of an offence inferring personal violence and—
    - (i) is subject to a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c.46), or
    - (ii) is required, having been released from imprisonment or detention, (or will be required when so released), to be under supervision under any enactment or by the terms of an order or licence of the Scottish Ministers or of a condition or requirement imposed in pursuance of an enactment;
  - (c) has, in proceedings on indictment, been acquitted of an offence inferring personal violence if—
    - (i) the acquittal is on the ground of insanity; and
    - (ii) a restriction order is made in respect of the person under section 59 of that Act of 1995 (hospital orders: restriction on discharge);
  - (d) has been prosecuted on indictment for such an offence but found, under section 54(1) of that Act of 1995 (insanity in bar of trial), to be insane; or
  - (e) has been convicted of an offence if, by reason of that conviction, the person is considered by the responsible authorities to be a person who may cause serious harm to the public at large.
- (2) It is immaterial—
  - (a) for the purposes of paragraph (a) of subsection (1), where the offence by virtue of which the person is subject to the notification requirements was committed (or, if the person is subject to the notification requirements by virtue of a finding under section 80(1)(b) of the Sexual Offences Act 2003 (c.42), where anything that he was charged with having done took place);
  - (b) for the purposes of paragraph (b) or (e) of that subsection, where the offence of which the person has been convicted was committed; or
  - (c) for the purposes of paragraph (c) or (d) of that subsection, where anything that the person was charged with having done took place.
- (3) Subject to subsection (11), in the establishment and implementation of those arrangements, the responsible authorities must act in co-operation with such persons as the Scottish Ministers may, by order made by statutory instrument, specify.
- (4) Subject to subsection (11), it is the duty of—
  - (a) any persons specified under subsection (3) to co-operate; and
  - (b) the responsible authorities to co-operate with each other,

in the establishment and implementation of those arrangements; but only to the extent that such co-operation is compatible with the exercise by those persons and authorities of their functions under any other enactment.

- (5) In the area of each local authority the responsible authorities and the persons specified under subsection (3) must together draw up a memorandum setting out the ways in which they are to co-operate with each other.
- (6) The Scottish Ministers may issue guidance to responsible authorities on the discharge of the functions conferred on those authorities by this section and section 11.
- (7) In this section and in section 11, the “responsible authorities” for the area of a local authority are—
  - (a) the chief constable of a police force maintained for a police area (or combined police area) any part of which is comprised within the area of the local authority;
  - (b) the local authority;
  - (c) a Health Board or Special Health Board for an area any part of which is comprised within the area of the local authority; and
  - (d) the Scottish Ministers.
- (8) The Scottish Ministers may by order made by statutory instrument amend the definition of the “responsible authorities” in subsection (7).
- (9) A statutory instrument containing an order under—
  - (a) subsection (3) is subject to annulment in pursuance of a resolution of the Parliament;
  - (b) subsection (8) is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.
- (10) Different provision may be made under subsection (3) for different purposes and for different areas.
- (11) The functions and duties, under the preceding provisions of this section and under section 11, of the responsible authorities mentioned in subsection (7)(c) extend only to the establishment, implementation and review of arrangements for the assessment and management of—
  - (a) persons subject to an order under section 57(2)(b) of the Criminal Procedure (Scotland) Act 1995 (c.46) (imposition of special restrictions in disposal of case where accused found to be insane);
  - (b) those subject to a restriction order under section 59 of that Act (provision for restrictions on discharge);
  - (c) those subject to a hospital direction under section 59A of that Act (direction authorising removal to and detention in specified hospital); or
  - (d) those subject to a transfer for treatment direction under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (transfer of prisoners for treatment for mental disorder).
- (12) But it is the duty of the responsible authorities mentioned in subsection (7)(c) to co-operate (to the extent mentioned in subsection (4)) with the other responsible authorities, with each other and with any persons specified under subsection (3), in the establishment and implementation of arrangements for the assessment and management of persons other than those mentioned in paragraphs (a) to (d) of subsection (11).
- (13) In subsection (7)(c)—

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29); and

“Special Health Board” means a board so constituted under section 2(1)(b) of that Act.

- (14) The reference in subsection (6)(c) to the Scottish Ministers is to the Scottish Ministers in exercise of their functions under the Prisons (Scotland) Act 1989 (c.45).

#### **11. Review of arrangements**

- (1) The responsible authorities must keep the arrangements established by them under section 10 under review for the purpose of monitoring the effectiveness of those arrangements and making any changes to them that appear necessary or expedient.
- (2) As soon as practicable after the end of each period of 12 months beginning with 1st April, the responsible authorities must—
- (a) jointly prepare a report on the discharge by them during that period of the functions conferred by section 10;
  - (b) publish the report in the area of the local authority; and
  - (c) submit the report to the community justice authority within the area of which the area of the local authority is comprised.
- (3) The report must include—
- (a) details of the arrangements established by the responsible authorities; and
  - (b) information of such description as the Scottish Ministers have notified to the responsible authorities that they wish to be included in the report.



**DELIVERY MODELS**  
**FOR**  
**MULTI AGENCY PUBLIC PROTECTION ARRANGEMENTS (MAPPAs).**

**STRUCTURE AND PARTNERSHIP: OPERATIONAL ISSUES**

It is very difficult to recommend specific delivery models for MAPPA arrangements and these are not provided within the guidelines for England and Wales for that reason. A key finding of the original evaluation into multi-agency Public Protection Panels in England and Wales was the considerable differences in management structures and processes. Areas differed in the degree of centralisation and the extent to which resources matched the number of offenders managed.

A common theme however is the success of areas which had co located offender management services.

In Scotland, the daily organisation and delivery of MAPPAs will differ across the country. This reflects the complexities of area size, character, resources, structures, priorities and volume of the number of offenders managed. It should also be borne in mind that different areas also have different histories of public protection work and multi-agency working. Although there is not a single delivery model which can be adopted across the whole country, all areas can be working within a national MAPPA framework.

It is the intention of the ACPOS Management of Offenders Act implementation team to work with individual forces and assist them in the development of local delivery models. The position of MAPPA coordinator will be crucial to the effectiveness of offender management.

The most significant recent document in relation to models for the delivery of MAPPA is the Home Office Development and Practice Report 45, 'Strengthening Multi Agency Public Protection Arrangements.

(<http://www.homeoffice.gov.uk/rds/pubsintro1>)

In the report, six force areas were the subject of study (listed as A-F) which revealed 3 separate delivery /organisational models as shown below.

**1. Centralised with joint operation**

Area A, which has mixed rural and city areas but has a small percentage of the number of MAPPA offenders managed across England and Wales (approx 2 %.)

Key characteristics:

- Joint working by police and probation in a central public protection team.
- Joint case supervision for level 3 and 2 cases.
- Joint organisation of MAPPA panel meetings at both levels

## **2. Decentralised with functional supervision**

Areas C, D and F are primarily urban areas. Area C is a mid sized metropolitan area. Area D is similar however it has a number of coastal communities. Area F is a large metropolitan area. All are managing approx 5% of the total MAPPA population for England and Wales.

Key characteristics:

- MAPPAS located within functional or Divisional units of probation.
- Level 3 cases chaired by designated Assistant Chief Probation Officer.
- Case supervision by functional teams within probation or by relevant Policing units.
- Well developed exchange of information between police and probation at a senior level and through level 3 panels.

## **3. Central Co-ordination with division supervision**

Areas B and E differ dramatically but show that structures can be adapted to fit existing force structures. Area B is mixed rural and city, managing a small number of offenders (approx 2%) whilst Area E is a large metropolitan area managing a very high number of offenders (approx 15%).

**Key characteristics:**

- A central unit for co-ordination of MAPPA work.
- Case supervision by dedicated probation public protection teams or police offender management units.
- Varying degrees of information exchange between police and probation at both formal and informal levels.

As shown above the MAPPA areas varied in size and in volume of offenders. There was no single correct model of working. Rather areas adapted practice to fit local circumstances. Some larger or more urban areas opted for divisionally based meetings at level 2 and 3 and local supervision of cases. This was sometimes supported by a central unit and coordinator, who tended to adopt a quality assurance role.

There are elements of good practice in each model. however it is clear that the most effective arrangements will depend on the existing geography, structure and volume of offenders within the Community Justice area.

## **Strategic Partnerships**

Across England and Wales it was found that a joint co-located unit allowed a single strategic multi agency approach to flourish. In one area this multi agency approach now deals with a broad range of public protection issues and a strategic body was formed to coordinate work with child protection, vulnerable adults and domestic violence. This seems to be broadly similar to the Child Protection Committee structure which now exists in Scotland.

## ANNEX C

### **Multi Agency Public Protection Arrangements (MAPPA) Coordinator Job Description**

#### **Principal Aim**

- To coordinate the operation of Multi Agency Public Protection Arrangements (MAPPA) on behalf of the responsible authorities within their functions under Section 10 and 11 of the Management of Offenders etc (Scotland) Act 2005
- To bring consistency and focus to the MAPPA process by providing a single point of contact for the responsible authorities and other agencies.
- To manage administrative support staff.

**Grade:** Senior Social worker or equivalent

**Responsible to:** The responsible authorities and will be formally employed and managed on their behalf by.....

**Responsible for:** Administrative Support Staff

#### **Special Requirements**

##### **Essential:**

- Knowledge relating to sex offenders, including relevant legislation, risk assessment and risk management.
- 3 years experience of working with sexual and/or violent offenders in either an enforcement or treatment capacity.
- Excellent communication skills, proven analytical and report writing skills.
- Experience of multi-agency working.
- Proficient in use of I.T.

##### **Desirable:**

Understanding of court sentencing and how it relates to offenders.

Understanding of Sections 10 and 11 of Management of Offenders etc (Scotland) Act 2005.

Social Work or other relevant qualification.

### **Main Responsibilities**

- Provide a central point of reference for responsible authorities and agencies in relation to the management of risk posed by potentially dangerous offenders
- Receive notifications and referrals to MAPPAs
- Act as gatekeeper - ensuring that appropriate referrals are made at the correct level of risk
- Negotiate with senior managers in the responsible authorities, primarily police, social work and prison service as to the appropriateness of referrals and challenge referral decisions if the criteria do not appear to have been met.
- Identify which agencies are central to the delivery of the risk management plan and organise appropriate attendance at meetings.
- Require agencies to search records for relevant information and collation of the pre meeting information.
- Arrange meetings, ensuring that invitations to attend and supporting documentation are sent out on time.
- Provide quality assurance of MAPPAs processes and monitor work to ensure a consistency of approach and that informed and appropriate decisions are taken
- Manage the administration support staff who will be responsible for preparation and distribution of the minutes of level 2 meetings and level 3 Multi Agency Public Protection Panels (MAPPS)
- Bring forward and schedule review meetings
- Attend level 3 MAPPP meetings
- Maintain and collate statistical information in order to inform evaluation and statistical reports.
- Draft an annual report on behalf of the responsible authorities
- Attend training courses relevant to the risk assessment and management of dangerous offenders
- Develop inter-agency liaison including in relation to the development of training on risk assessment and management
- Inform other areas when an offender subject to MAPPAs moves into their area
- Ensure that the principles in relation to sharing information, confidentiality and disclosure are maintained as outlined in the Memorandum and Multi Agency Public Protection Protocol
- Actively market the work of Multi Agency Public Protection Arrangements
- Access and, where appropriate, input information onto ViSOR
- Undertake such other reasonable duties as may be required from time to time.

### **Note**

The remit of the MAPPAs Coordinator does not extend to responsibility for areas that fall within the remit and responsibility of individual agencies.

*The post is subject to enhanced disclosure checks etc*



## **PERSON SPECIFICATION**

This will be a senior appointment.

It is essential the person filling the post should have:

- Good organisational abilities and managerial experience
- Good communication skills (verbal, written and presentational)
- Good IT skills
- Ability to work across and along with a multiple number of agencies
- Ability to work with the press and media and to promote the work of the Multi Agency Public Protection Arrangements (MAPPA)

It is desirable that the person has experience in or knowledge of the Scottish Criminal Justice System generally and in the management of sex offenders in particular.

## **APPOINTMENT AND RECRUITMENT**

The appointment may be filled by secondment from within agencies or by external advertisement.

Consideration of applicants, selection for interview and selection for appointment will be undertaken by members of the MAPPA Implementation Teams or by a smaller number of their members determined by the Implementation Team.

The period of appointment will be for an initial period of 2 years after which the post will be reviewed.

### **Applications**

Applications are invited for a minimum 2 year position/secondment as MAPPA Coordinator. The post holder will be based in (.....) and will be line managed by (.....)

**Tasks:** This is a new venture which brings together the responsible authorities and a range of agencies in a new approach to assessing and managing the risk from sex and violent offenders. These agencies represent a broad spectrum of interests and the task of the successful applicant is to coordinate delivery of the joint arrangements under sections 10 & 11 of the Management of Offenders etc (Scotland) Act 2005.

The Coordinator will support the responsible authorities in the delivery of the joint arrangements. This has been endorsed by the Tripartite Group, with representation from SPS, the police and local authorities, which has developed guidance and a model for the arrangements. The Coordinator will work largely on his/her own initiative and will be a key player in what is a high profile initiative which is likely to be the subject of a high level of interest and scrutiny from politicians, policy makers, local communities and the media. This

is a challenging task and will require a committed, resourceful and resilient individual to ensure the success of the joint arrangements.

The Coordinator will establish the procedures set out in the Working Group's Guidance and broker solutions to any inter-agency issues that arise in consultation with the responsible authorities.

**Skills, knowledge, experience and qualifications required.** You will have excellent negotiating and influencing skills. You will be a self-starter who welcomes challenges and who can work on your own initiative. You must be able to work effectively with a wide range of agencies drawn from very different backgrounds and cultures and be able to inspire individuals to work together. You will have demonstrated good project management skills and will be used to meeting tight deadlines on your own and working with others. You will have good presentational skills and be resilient and able to resolve problems in an area where there are few precedents.

**Development Opportunities:** this is a unique opportunity to be at the forefront of an exciting new development which spans the work of a wide range of different agencies. It will be a testing assignment but one which will allow the post holder to contribute to shaping a new system for dealing with violent and sex offenders.

**Closing date for receipt of applications and contact person:**

A job description and person specification can be obtained from.....

Additional information can be obtained by speaking to.....Tel No.....

Applications should be sent by **xx/xx/xxxx** to .....

**Geographical Model for Scotland****Annex D**

Number of Coordinators	Eight CJAs	Local Prisons	Police Forces	Health Boards	Partnerships
Two	Northern CJA	Aberdeen	Grampian	Grampian	Aberdeenshire Aberdeen City Moray
		Inverness	Northern	Highland	Highland
		(Aberdeen)		Orkney	Orkney
				Shetland	Shetland
				W. Isles	W. Isles
Two	Lothians and Borders CJA	Edinburgh	Lothians & Borders	Lothians	L & B Partnership Edinburgh East Lothian West Lothian Midlothian
				Borders	Scottish Borders
One	Tayside	Perth	Tayside	Tayside	<i>Tayside Partnership</i> Angus Dundee City Perth & Kinross
Two	Fife and Forth Valley		Fife	Fife	<i>Fife Unitary Authority</i>
		Barlinnie	Central Scotland	Forth Valley	<i>Forth Valley</i> Clackmannanshire Falkirk Stirling
One	North Strathclyde CJA	Greenock	Strathclyde	Argyll & Clyde	Argyll, Bute & Dunbartonshires Argyll & Bute
				GGHB	East Dunbartonshire West Dunbartonshire
					East Renfrewshire Renfrewshire Inverclyde
One	Glasgow CJA (unitary)	Barlinnie		Greater Glasgow	Glasgow City (unitary)
One	Lanarkshire CJA			Lanarkshire (GGHB) <sup>1</sup>	<i>Lanarkshire</i> North Lanarkshire South Lanarkshire
One	South West Scotland CJA	Kilmarnock		Ayrshire & Arran	<i>Ayrshire</i> East Ayrshire North Ayrshire South Ayrshire
				Dumfries	Dumfries & Galloway

All of East Dunbartonshire and parts of West Dunbartonshire, East Renfrewshire, North and South Lanarkshire are included in Greater Glasgow Health Board.



## RISK ASSESSMENT AND MANAGEMENT

### Paper for MAPPA Guidance notes

#### INTRODUCTION

1. The purpose of any risk assessment is to identify possible undesirable events and in the MAPPA system the focus is on sexual and violent offending, and the associated risk of serious harm to others:

*There is a risk of harmful behaviour which is life threatening and/or traumatic and from which the victim's recovery, whether physical or psychological, can be expected to be difficult or impossible.*

In MAPPA the agreed definitions for levels of risk are as follows:

RISK LEVEL	MAPPA DEFINITION
<b>VERY HIGH</b>	There is imminent risk of serious harm. The potential event is more likely than not to happen imminently, and the impact could be serious
<b>HIGH</b>	There are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact could be serious.
<b>MEDIUM</b>	There are identifiable indicators of risk of serious harm. This person has the potential to cause harm, but is unlikely to do so unless there is a change of circumstances
<b>LOW</b>	Current evidence does not indicate likelihood of causing serious harm

Agreed levels and definitions can give a common '**code**', or shared understanding for communicating simply about risk. However, they should not contribute to a belief that the process of assessing risk of serious harm can ever be simple. It is vital that those using terms such as 'high' or 'low' all share an understanding of what that term conveys. This is particularly important when the subject matter is complex as it is when assessing sexual or violent offending.

The above definitions illustrate this as they encompass several dimensions of risk: **likelihood**, **impact** and **imminence**.

2. When the current level of risk is **LOW**, 'current evidence does not indicate likelihood of causing serious harm'.

The balance of protective factors now substantially outweighs any risk factors and there are **no** current indicators of risk of serious harm. Such a situation could be described as **PROTECTIVE**.

To arrive at this conclusion the risk assessment process must fully explore the **nature, severity, frequency, imminence and likelihood of the offending behaviour**.

3. When the current level of risk is **MEDIUM**, there are 'identifiable indicators of risk of serious harm. This person has the potential to cause harm, but is unlikely to do so unless there is a change of circumstances'.

That is, the risk factors are currently balanced by protective factors. The offender is co-operating with risk management strategies and/or complies with treatment. There is capacity to self-risk manage with appropriate support. However, the balance could tip either way and so merits continued support, intervention and monitoring to maintain or improve that balance. In such a situation the risk could be described as **STABLE**.

4. When the current level of risk is **HIGH**, there are 'identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact could be serious'.

That is, on balance the risk factors outweigh any protective factors. However, there are aspects of the current situation that provide a degree of protection - while the likelihood of serious harm remains high there are some protective factors that *currently* mitigate the risk. For example, the offender evidences some capacity to engage with risk management strategies and/or comply with treatment; the offender has some capacity to self-risk manage; perhaps the current environment greatly reduces the opportunity to offend. However, he / she will present a risk if protective factors 'fail', are absent or diminish. In such a situation the risk could be described as **DESTABILISED**.

5. When the current level of risk is **VERY HIGH**, there is 'imminent risk of serious harm. The potential event is more likely than not to happen imminently, and the impact could be serious'.

That is, on balance the risk factors greatly outweigh any protective factors, if indeed there are any protective factors. There are no factors to mitigate the likelihood of a serious offence occurring at any time, and this will happen if necessary measures are absent. In such a situation the risk could be described as **CRITICAL**.

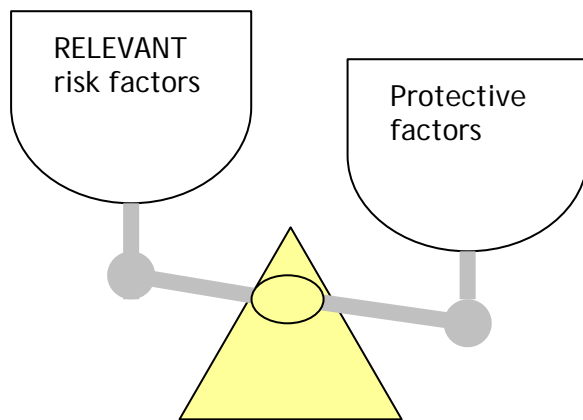
A model of the risk assessment process and its link to decision making in MAPPA is offered below:

**Risk of Serious harm**

This is a risk that is life threatening and/or traumatic and from which the victim's/victims' recovery, whether physical or psychological can be expected to be difficult or impossible.

What is the nature of the risk?

Who is at risk?  
 Familial, stranger, male/female, adult/child



Situations and circumstances



Imminence and frequency

- Imminence: is the serious offending behaviour:
- Likely to occur at any time in current circumstances
  - Dependant on current measures and protective factors
  - Dependant on stability of balance of risk and protective factors
  - Not imminent

Is the serious offending behaviour occasional or pervasive?

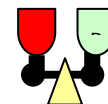
**CURRENT LEVEL OF RISK**



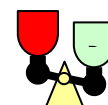
**Critical**  
 There is imminent risk of serious harm. The potential event is more likely than not to happen imminently, and the impact could be serious = **VERY HIGH**



**Destabilised**  
 There are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact could be serious = **HIGH**



**Stable**  
 There are identifiable indicators of risk of serious harm. This person has the potential to cause harm, but is unlikely to do so unless there is a change of circumstances = **MEDIUM**



**Protective**  
 Current evidence does not indicate likelihood of causing serious harm = **LOW**



6. More detailed guidance on this process can be found in chapters 2, 3 and 4 of RMA Standards and Guidelines for Risk Management Plans which can be found at [www.rmascotland.gsi.gov.uk/standardsguidance.aspx](http://www.rmascotland.gsi.gov.uk/standardsguidance.aspx). While this document refers specifically to processes and standards for the Order for Lifelong Restriction (OLR) the principles and practice contained therein are equally applicable in the MAPPA context.

7. From October 2007, further guidance will also be available as an interactive CD - 'Assessing and Managing Risk' – A Staff Development Resource

## **BACKGROUND**

8. Human behaviour is notoriously hard to predict and risk assessment is an inexact science. The last twenty years have seen the development of a body of research evidence which has provided a more robust approach and a range of assessment methods which have been demonstrated to have acceptable reliability and validity. There is now consensus that risk assessment should not be based solely on clinical judgement. Instead, assessment should use a structured, evidence based approach which uses information from a range of sources and takes into account not just previous offending patterns, but a comprehensive analysis of the individual and the situations in which they will present a particular risk.

9. The findings of inquiries conducted following the commission of serious further offences indicate a number of common issues and a need for risk management to include :

- Constant emphasis on public protection;
- Sound risk assessment involving appropriate methods used by trained and experienced staff;
- Clear links between such risk assessment and risk management planning;
- Identified courses of action or intervention to be delivered as planned;
- Consistent and reliable co-ordination of cases;
- Clarity about multi-agency and multi-disciplinary roles and responsibilities; and
- Effective inter agency communication and agreement on shared tasks.

## **THE PRACTICAL APPLICATION OF RISK ASSESSMENT AND MANAGEMENT**

10. At a strategic level, all criminal justice services need information on the risk levels of offenders in order to make decisions regarding:

- which offenders to prioritise and the reasons for this;
- what resources are needed and how these will be allocated; and
- what actions can be taken to develop preventive measures which will contribute to public safety.

11. At an operational level, the MAPPA framework will require coordinated interagency risk management of individual offenders. When moving from levels 1-3 in the framework, a progression in the intensity of the risk assessment and management will be required. Classification should address a range of different questions about the risk presented, which include:



- *Likelihood* : what probability is there of serious reoffending?
- *Impact* : what is the severity of the risk of harm to others?
- *Imminence* : what are the early warning signs that serious reoffending is about to occur?

12. To answer these questions in a way that will enable effective risk management of sexual and violent offenders who pose a risk of serious harm requires a more detailed and comprehensive approach including :

- *Background information* such as social history, mental and physical health, substance misuse; and previous response to supervision;
- *Analysis of offending behaviour* to include historical information and details about the pattern of offending such as escalation, diversity, potential victims and characteristics such as motivation, triggers and the offender's own perspective on their behaviour, its impact and the way it should be managed;
- *Identification of the risk factors* which arise for the offender from such analysis;
- *Identification of any protective factors* or positive features about the individual and his environment which may mitigate the risk;
- *Formulation of the risks presented* which states the relationship of these factors;
- *Planning of future risk scenarios* in which the individual's characteristic risk factors will interact with each other in a particular situation leading to a heightened risk of serious reoffending;
- *Action plans* to address the risk factors; and
- *Monitoring and recording* of change

13. Agencies and practitioners will have different contributions to make to the risk assessment and management of an individual offender. Information sharing between agencies is of paramount importance and the provisions made in the Management of Offenders etc. (Scotland) Act 2005 which place a duty on responsible authorities to cooperate provide a valuable foundation for the development of good practice.

## **A TIERED APPROACH TO RISK ASSESSMENT**

14. The first step for services involved in managing large numbers of offenders is screening to prioritise those individuals who require further investigation and to determine the appropriate level of resource allocation. At this stage the methods employed will typically be actuarial tools which provide a statistical estimate of likelihood of reoffending.

15. The police have a statutory duty to monitor all those on the sex offender register and their responsibilities extend across the range of risk levels. They have a continuing responsibility for offenders whose risk requires the involvement of other agencies in their management and are also tasked with the observation of those whose behaviour is giving cause for concern, but who may not be convicted, nor on the sex offender register. Police intelligence and observation contributes valuable information to risk assessment and management. The development of the ViSOR system in Scotland has enabled such information to be captured and held in a structured and secure framework and to be easily

accessed and shared as appropriate with other agencies. Monitoring individuals for early warning signs of serious reoffending is dependent on such information and the effectiveness with which it can be shared with relevant others.

16. Recent development has been the introduction of a standard first sift for the likelihood of sexual reoffending, with the training of police officers and social workers in the use of the actuarial tool, Risk Matrix 2000 (RM2000). As with any actuarial tool, RM2000 works by comparing an individual with groups of others who share similar characteristics and previous history and their patterns of behaviour. It provides probabilities of the likelihood of sexual recidivism. However, RM2000 can only give us a probability estimate of whether sexual reoffending will take place. This does not give us information on the likely severity or harm of any such reoffending, nor how to understand and address the risks which a particular individual presents. Furthermore, RM2000 can only provide a static assessment of risk because it is based on historical information and cannot change. This type of assessment, when coupled with other sources of information, will help to establish the required intensity of monitoring for an individual offender and/or the need to refer them on to other agencies for more detailed assessment and management.

17. Currently there is not an instrument that serves this purpose for violence. The Violence Risk Appraisal Guide (VRAG) is an actuarial tool, but may be too complex for screening purposes. This is an area for future development.

18. Criminal justice social workers have a need for assessment methods that go beyond screening purposes. As case managers with responsibility for the supervision of offenders in the community, and with the joint aims of rehabilitation and of public protection, they require to be able to identify relevant risk factors, prepare appropriate action plans, and co-ordinate the necessary services. This task becomes proportionately more complex as the level of risk posed by the offender increases. They have a key role in the initial assessment of offenders for the courts and in the management of such offenders on community supervision. They are also involved in the delivery of accredited programme work to address offending behaviour. Whether as case manager of an extensive and varied case-load or a manager of a team workload, criminal justice social work use of a transparent and standardised approach to prioritisation and allocation of resources is important.

19. The Stable 2007 and Acute 2007 scales developed by Hanson and Harris have recently been introduced to address the need for a technique to supplement the assessment of static risk provided by the RM2000. These scales will enable the police and social work to take account of dynamic factors relating to risk of reoffending and to consider characteristics related to offending which may change. In a robust risk management plan, such factors may be addressed by risk management strategies which range from personal change programmes to preventive interventions. The focus on dynamic factors also enables further detailed assessment of the conditions and situations in which an individual offender may become an acute risk. So, for example, where substance abuse is a risk factor for an offender, the risk management plan should contain strategies to address and reduce both the ongoing or *stable* risk factor and sudden increases in use and intoxication which are *acute* risk factors to be monitored closely and taken into account in contingency planning. This type of assessment will be new to many practitioners, but will provide a structure to the judgements which they already make on a daily basis and should assist in the assessment and management of offenders at all levels of MAPP. The Acute section of this approach speaks clearly to the risk management activity of monitoring as it promotes recognition of those factors that may

be early warning signs and advises of those behaviours and events whose occurrence merits agreed action. The development of the above tools is a breakthrough in the management of sexual offenders.

20. No single tool is adequate in the assessment and management of those offenders who pose a risk of serious harm and assessment tools are also of limited use on their own. To make an effective contribution to offender management such tools must be used in the context of structured risk management planning, a new area for most agencies.

21. Two approaches are currently in use in different Scottish criminal justice social work services.

The Level of Service Inventory- Revised (LSI-R) is widely used by criminal justice social workers. The LSI-R provides a standardised technique for the assessment of those offender needs which will require management to prevent reoffending. The Level of Service Case Management Inventory (LSCMI), is a further revision of the LSI-R and adds an important case management component to the analysis of needs and risk of reoffending and serious harm. This tool is currently being adapted for use in Scotland and will become the foundation for the assessment and management of offenders.

The Risk Assessment Guidance Framework (RAGF) instruments identify the relevant risk factors and indicate a suggested level of service, based on the nature and extent of the criminogenic needs, required to minimise the risk of reoffending. These instruments also review both static and dynamic risk factors and require considerable professional judgement in administration.

22. There are advantages and limitations in both instruments. The LSI-R has a robust international research base to validate its reliability, although limited UK research. The RAGF has suffered from minimal research activity to validate its use, but has a good theoretical grounding, was developed for Scotland and contains two sections that explore the risk of harm. To date local authority criminal justice services have opted for one or other, or a combination of both approaches in their offender management. However, the national implementation of a common tool is now planned, with the proposals for the LSCMI.

23. The Level of Service Case Management Inventory (LSCMI), is a substantial development of the LSI-R and adds a number of further components to comprise a case management system. It includes a review of 'strength' factors, responsivity, individual and perpetration issues and leads progressively to a case management plan. As such it moves from being an aid to structured professional judgement (SPJ) to a tool that explicitly guides SPJ. LSCMI will also incorporate an assessment for the risk of serious harm and related risk management planning.

24. The adoption of the Integrated Case Management (ICM) system into the Scottish Prison Service (SPS) provides for risk and needs assessment across the continuum of risk of serious harm and complements the assessment protocols which SPS already uses for the longer term prisoners who present a risk of serious harm. This process will apply to all prisoners on enhanced status within the ICM process which now takes into account all prisoners subject to statutory supervision upon release i.e. long-term prisoners, Sex offenders serving 6 months or more, Supervised release orders and extended sentences. The enhanced system includes actions plans for management purposes.

25. In addition, by the end of 2007, all restricted patients will be subject to the Care Programme Approach which will provide consistency across Scotland in relation to risk – revised guidance to be issued mid-2007.

26. More intensive and specialist assessment is needed for offenders who are thought to present a risk of serious harm to others by their sexual and violent offending behaviour. In recent years the structured professional judgement approach has gained widespread acceptance as a model of risk assessment which not only provides a comprehensive and holistic evidence based analysis of the risk and needs of the individual, but does this with a structured and standardised approach. As such, it avoids both the subjectivity of the clinical approach and the limitations of the actuarial scales. The RMA has published Standards and Guidelines for the preparation of Risk Assessment Reports for offenders for whom the High Court is considering for an Order for Lifelong Restriction. These guidelines also provide a guide to best practice in the assessment of risk of serious harm for other serious sexual and violent offenders.

27. Examples of tools and techniques which use the structured professional judgement approach include the Historical Clinical Risk-20 (HCR-20) and the Risk of Sexual Violence Protocol (RSVP). These techniques have been developed by psychologists, but other professional groups such as psychiatrists, social workers and nurses are increasingly undertaking training and using them in their risk assessments. Alongside these tools there are a significant number of specialist tools developed to assess different aspects of sexual and violent offending. More information about all these tools can be found in Risk Assessment Tools Evaluation Directory (RATED), the RMA review of tools, which gives information about the strengths and limitations of the different tools and their use. You can download a copy of RATED from the RMA website at [www.RMAscotland.gov.uk/rmapublications.aspx](http://www.RMAscotland.gov.uk/rmapublications.aspx).

## **RISK MANAGEMENT**

28. Strategies for the risk management of individuals who present a risk of serious harm should include a combination of monitoring, supervision and personal change programmes. Different agencies will have different roles and responsibilities to contribute to the assessment and management process, which should complement each other to give a comprehensive framework for action. The RMA is preparing Standards and Guidelines for the risk management plans for those offenders who receive an Order for Lifelong Restriction. This guidance will also be of direct relevance to MAPPA as it defines good practice for the risk management of all sexual and violent offenders who present a risk of serious harm. The principal areas covered include:

- Collaborative working
- Risk assessment
- Planning
- Risk management strategies
- Accommodation
- Responding to change
- The responsibilities of lead authorities.

The RMA has also developed a proforma for the process of risk management planning.

29. The techniques and interventions used in risk assessment and management must have a sound evidence base and structured approach which details how they are to be applied. They must be appropriate both to the nature of the offending behaviour and the characteristics of the offender such as age and gender. In the case of assessment tools, those using them must receive approved training and comply with the user requirements and qualifications specified by the authors and publishers. The design and the delivery of interventions should conform with the principles underlying the programme accreditation process.

30. Joint training between agencies on risk assessment and management will provide a valuable contribution to the multi agency working and information sharing which is fundamental to effective risk assessment and management and will enable a coordinated approach by the responsible authorities to MAPPA. Hazel Kemshall is developing a CDROM on risk management for use in Scotland and the RMA is developing a training programme in conjunction with their Risk Management Standards and Guidance for practitioners which will complement this work.

31. The complexity of managing serious violent and sexual offenders within the MAPPA system will necessitate a level of service whose sophistication and intensity is proportionate to the level of risk posed by such offenders, and can be delivered by the least restrictive means consistent with public safety.

**RMA**  
**September 2007**



## **Annex F**

### **The Victim Focus**

1. The primary focus of the MAPPA is properly placed upon the risk posed by and the behaviour of the offender. In doing so it is vital that the MAPPA take into account potential impact on known victims. There are references to victims throughout the MAPPA Guidance however this section gives a more general description of victims' issues.
2. The victim focus of the MAPPA includes not only those most easily identified as the victim(s) but those who, while not directly involved with the offence itself, have been seriously affected by it – the family of a murder victim, for example. This consideration must also include new or potential victims, and it is this which sharpens the focus of risk assessments. Indeed, risk assessment becomes an academic exercise unless those who are at risk are identified. In some cases these may not be any named individual(s) but people who are vulnerable by virtue of their location, age, gender, race, religion, sexuality or other distinguishing characteristic.
3. The risks an offender may pose to some particularly vulnerable people, such as children, will require effective links between the Responsible Authorities and other agencies. Liaising with victims, particularly those most vulnerable, will be a sensitive matter which requires careful handling.
4. The challenge for the MAPPA is to ensure that the risk assessment and risk management plan developed by the Responsible Authorities for the offender takes full account of the known concerns of any specified victim(s). The Responsible Authorities must satisfy themselves that they have thoroughly considered the potential risks to which any victim may be exposed and put in place appropriate robust plans to minimise the likelihood of the offender causing further serious harm. The sharing of information relating to the victim(s) by the Responsible Authorities plays a central role in making this aspect of the MAPPA process successful. Such an approach will, for example, minimise the likelihood of an offender being released from custody and being accommodated within the same neighbourhood locality as a victim.

### **Rights of Victims**

5. The **Victim Notification Scheme (VNS)** introduced by section 16 of the Criminal Justice (Scotland) Act 2003, confers on victims - in cases where the victim's assailant has been sentenced to four or more years in prison (the length of sentence covered by VNS is currently being reviewed and may be amended to cover some cases where the offender is sentenced to less than four years in prison, a final decision will probably not be made until late in 2007) - the right to apply to :-
  - receive information on the date the person is to be released (other than temporary release)
  - if the convicted person dies before release the date of death
  - that the convicted person has been transferred outwith Scotland
  - that the convicted person has become eligible for temporary release
  - that the convicted person is unlawfully at large

- receive certain information regarding Parole Board review hearings and licence conditions from the Parole Board; and
  - make representations to the Parole Board prior to a decision being taken on the release (and the licence conditions) of the offender and, in certain circumstances, to make representations to the Scottish Ministers prior to a decision being taken by them on licence conditions and to receive certain information concerning licence conditions from the Scottish Ministers.
6. The legislation provides a lawful basis for the disclosure of information to victims (within the limits set out in the Act). The Victim Notification (Prescribed Offences) (Scotland) Order 2004 which prescribed the offences covered by the VNS came into effect on 1 November 2004 (SSI 2004 No 411). Further information on the prescribed offences is available at <http://www.opsi.gov.uk/legislation/scotland/ssi2004/20040411.htm>.
7. It is important to note that not all victims apply to the VNS, and some of those that do so do not keep SPS informed of any change in address. Moreover the VNS does not apply to victims whose case has not been proven in court, for example, a serial rapist might be prosecuted for specimen offences and victims of offences that were not prosecuted would not be eligible to join the VNS. Finally, victims of offences where the offender was sentenced prior to 1997 (which was when the SPS introduced an administrative victim notification scheme) although eligible to join VNS may not be aware of their right to do so.

### **Support for Victims**

8. Victim Information and Advice (VIA) which is part of the Crown Office and Procurator Fiscal Service, also gives factual advice and support to victims of certain crimes including sexual offences and to the families of homicide victims on the progress of their case, from the time that it is reported to the Procurator Fiscal through to the trial. If the offender lodges an appeal, victims will normally be kept informed of developments by the local Procurator Fiscal's Office.
9. Victim Support Scotland and its Witness Service arm, as well as Women's Aid and Rape Crisis services, and other voluntary agencies, also offer practical and emotional support to victims.



## MAPPA NOTIFICATION FORM

## ANNEX G

<b>To:</b>	
<b>MAPPA Coordinator:</b>	
<b>CJA Area:</b>	
<b>Address</b>	
<b>Level 1: Ordinary Risk Management</b> is the level used in cases where the risk posed by the offender can be managed by one agency without actively or significantly involving other agencies.	
<b>Offender/MDO Details</b>	
<b>This is a stage 1 notification of a category 1 registered sex offender</b>	
<b>Registration Date:</b>	
<b>Expiry Date:</b>	
<b>*Please tick as appropriate</b>	
<b>* Notification Only</b>	
<b>* Notification accompanied by referral to level 2 (should be accompanied by the appropriate referral form).</b>	
<b>* Notification accompanied by referral to level 3 (should be accompanied by the appropriate referral form).</b>	
<b>* Referral to follow</b>	
<b>Name</b>	
<b>Alias</b>	
<b>DOB</b>	
<b>Age</b>	
<b>Gender Male/Female</b>	
<b>Race &amp; Ethnic Origin</b>	
<b>If known:</b>	
<b>Prison Number</b>	
<b>PNC No</b>	
<b>SCRO No</b>	
<b>ViSOR No</b>	
<b>Current Address</b>	<b>Previous significant address/Hospital (for mentally disordered offenders)</b>
<b>Agency Making the Notification</b>	
<b>Responsible Authority/Establishment/Agency</b>	
<b>Notified by (Name)</b>	
<b>Job Title</b>	
<b>Contact Tel No</b>	
<b>Date of notification</b>	

<b>Notification Type</b>	
*Definition of notification types are given in the attached Annex.	
<b>Pre 02 April 2007</b> Notification of registered sex offender cases in the community prior to 02 April 07 (i.e. those who are being monitored by the police only, or those also subject to supervision.	
<b>Post 02 April 2007</b>	
*Community Sentence	Date of Community Sentence
*From Custody (offender serving less than 6 months)	Earliest Date of Liberation
*Advanced Notification:	Potential Date of Release
*Confirmed notification where Parole is granted:	Date of Release
*Confirmed notification where Parole is not granted:	Earliest Date of Liberation
* Health Notifications	
<b>Offence Details</b>	
Offence/Behaviour causing concern	
Please give brief details of circumstances:	
<b>If applicable:</b>	
Licence/Order Expiry Date	
Details of any other statutory order: ie SOPO, OLR, RSHO etc	
Full contact details of Supervising Officer/Responsible Medical Officer (for mentally disordered offenders) where appropriate	

Signature: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

Community Sentence:	<i>Stage 1 notification should be made by Criminal Justice Social Work no later than 3 working days following the receipt of the community disposal or order.</i>
From Custody:	<i>For those serving less than 6 months SPS should notify the MAPPA Coordinator at the earliest opportunity given the limited time available.</i>
Advanced Notification:	<i>For those prisoners subject to statutory supervision on release by Criminal Justice Social Work in the community, SPS should give an advanced stage 1 notification (and stage 2 referral where appropriate) to the MAPPA Coordinator. This should be done after the annual ICM case conference preceding the prisoners PQD.</i>
Confirmed notification where Parole is granted:	<i>A confirmed notification (and stage 2 referral where appropriate) should be sent to the coordinator once the parole decision has been made.</i>
Confirmed notification where Parole is not granted:	<i>A confirmed notification (and stage 2 referral where appropriate) for those not granted parole should be made at 3 months prior to the prisoners EDL</i>
Health Notifications (for mentally disordered offenders subject to the following: compulsion order, compulsion order with restriction order, hospital direction, transfer for treatment direction)	<i>Where individuals are in the community or will soon be having periods of time in the community stage 1 notification (and stage 2 referral where appropriate) should be made to the MAPPA Coordinator.</i>

**RESTRICTED**  
**MAPPA REFERRAL FORM**

CATEGORY 1	CATEGORY 2	CATEGORY 3
<i>Registered Sex offender</i>	<i>Violent Offender</i>	<i>Other Offender</i>
Registration Date : Expiry Date ;		

**PERSONAL DETAILS**

NAME		DOB	
ALIAS		AGE	
GENDER	Male / Female		
RACE & ETHNIC ORIGIN			

Prison No	
PNC No	
SCRO No	
ViSOR No	

Current Address / Release Address	Previous significant address

Agency/Establishment Referring	
Referred by	
Job Title	
Contact Tel No	
Date of referral	
Is the offender aware of the referral?	If not why.

**RESTRICTED**

**OFFENCE DETAILS**

Offence / Behaviour causing concern
Please give brief details of circumstances:

**COURT AND LICENCE/ORDER DETAILS**

Sentencing Court		Sentence Date	
------------------	--	---------------	--

Sentence / Order Details	
--------------------------	--

If Custody Release Date	in		Licence Expiry Date		Sentence Expiry Date	
-------------------------	----	--	---------------------	--	----------------------	--

Details of any other statutory order <i>ie SOPO, OLR, RSHO CORO etc</i>

Status in Criminal Justice/Mental Health system (for MDOs) - including any outstanding court dates <i>Please give details (e.g. Bail, Community Sentence)</i>

Full contact details of Supervising Officer/Responsible Medical Officer (for MDOs)
--

**RESTRICTED**

**HISTORY OF DANGEROUS BEHAVIOUR**

*Please give all information known. Remember this is preliminary information - more information will be received at the Panel from other agencies.*

<p>1. Please attach or detail most recent list of convictions. Highlight all violent/sexual offences.</p>
<p>2. List any offences or concerns relating to children/young persons. Detail any children within/outside the family who may be at risk, with names and dates of birth.</p>
<p>3. List all known incidents of violence to staff or any other agency.</p>
<p>4. List all known concerning incidents whilst in an institution e.g. prison, hospital.</p>
<p>5. Please give details of any other information held which may assist with public protection</p>
<p>e.g. Please give details of any known violent / sexual behaviour, previous allegations, domestic abuse incidents.</p>

**RESTRICTED****SUMMARY OF ASSESSMENT OF RISK**

*Please indicate if any of the following are present and relevant. Please also clearly identify in which attached document the information is recorded (e.g. SER)*

1. Is the risk predictable, ie. is there evidence of repeat behaviour	
---	--

2. Identified Risk Factors	
Alcohol	
Drugs	
Criminogenic Attitudes/Beliefs	
Sexual Gratification	
Anger	
Stress	
Mental Health	
Learning Difficulties	
Victim access	
Lifestyle Collapse	
Disengaged from supervision/monitoring	
Other (please specify)	

3. Does the offender consider he/she is a risk?	
---	--

4. Identified Protective Factors?	
Stable Family relationship	
Stable Accommodation	
Compliance with Court Orders/Licence	
Acceptance of risk and willingness to co-operate	
Any previous history of successful intervention	
Medication	

5. Child Protection referral/Vulnerable Adult referral	
If Yes to whom and any known outcome (please also include details of any past referrals and to whom)	





**RESTRICTED**

**SUGGESTED LEVEL OF MAPPA MANAGEMENT**

LEVEL 2	LEVEL 3
---------	---------

**LIST OF ATTACHEMENTS;**

e.g. SCRO record, prison report

SIGNATURE .....

DATE OF COMPLETION .....

**RESTRICTED**

**List of possible attendees, other agencies/professionals involved**

An e-mail address for each contact is particularly helpful

Name	
Designation	
Address	
Tel No & E Mail	
Name	
Designation	
Address	
Tel No & E Mail	
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**CONFIDENTIAL**  
**MULTI AGENCY PUBLIC PROTECTION ARRANGEMENTS (MAPPA)**  
**RISK MANAGEMENT MEETING TEMPLATE (LEVELS 2&3)**

**Confidentiality Statement**

*In working with offenders, victims and other members of the public, all agencies have agreed boundaries of confidentiality. The agencies within this meeting respect those boundaries and hold the meeting under the shared understanding that:*

- *it is called in circumstances where it is considered that the risk presented by the subject of the meeting is so great that issues of public or individual safety outweigh those of confidentiality.*
- *the disclosure of information outside the meeting, beyond that agreed at the meeting, will be considered as a breach of the subject's confidentiality and a breach of the confidentiality of the agencies involved.*
- *all documents should be marked "Confidential – not to be disclosed without consent".*
- *if the consent to disclose is considered essential, permission should be sought from the Chair of the meeting, and a decision will be made on the overriding principle of a public safety, "need to know."*

**OPEN SESSION**

**INITIAL / REVIEW MEETING**

(please delete as appropriate)

**DATE:**

**MEETING LOCATION:**

**OFFENDER'S NAME:**

**DATE OF BIRTH:**

**ADDRESS:**

**PRESENT:**

**APOLOGIES:**

Are all parties necessary to inform the discussion and decision making represented?  
If not, have they provided the necessary information?

**PURPOSE OF MEETING:**

The purpose of the meeting today is to

- share and consider confidential information;
- to reach an agreement regarding an assessment of the risk posed by (NAME).....;and
- to formulate a Risk Management Action Plan.

**REVIEW DATE:**

**CLOSED SESSION**

**INFORMATION UPDATES OR CLARIFICATION PROVIDED AT MEETING:**

POLICE:

SPS:

CRIMINAL JUSTICE SOCIAL WORK:

OTHER AGENCIES (Health, Housing etc):

**RISK ASSESSMENT**

**THE FOLLOWING RISK FACTORS WERE DETERMINED:**

**THE FOLLOWING PROTECTIVE FACTORS WERE DETERMINED:**

Are there any diversity issues in relation to the **offender** which should be taken into consideration?

**THIS PERSON IS OF RISK TO:**

the public  
known children  
children in general  
Staff  
Self  
Known adult  
Prisoners  
Others

Are there any diversity issues in relation to the **potential victim(s)** which should be taken into consideration?

**AGREED LEVEL OF RISK**

**VERY HIGH RISK** - There is imminent risk of serious harm. The potential event is more likely than not to happen imminently, and the impact could be serious.

**HIGH RISK** - There are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact could be serious.

**MEDIUM RISK** - There are identifiable indicators of risk of serious harm. (Name) has the potential to cause harm, but is unlikely to do so unless there is a change of circumstances

**LOW RISK** - Current evidence does not indicate likelihood of causing serious harm

**RISK MANAGEMENT PLAN**

(Each feature of the management plan should relate directly to features of the risks identified in the Risk Assessment).

(N.B. Where changes are proposed to the plan which require alteration to the existing licence conditions, a report must be submitted by the supervising officer to the Parole and Life Sentence Review Division of the Criminal Justice Directorate for consideration.)

**ACTION REQUIRED:**

**BY WHOM:**

**BY WHEN:**

Is offender involvement considered appropriate?

## **DISCLOSURE ISSUES**

### **N.B. EACH MEETING MUST ACTIVELY CONSIDER WHETHER DISCLOSURE TO A THIRD PARTY IS IN THE PUBLIC INTEREST AND A RECORD MUST BE KEPT OF THE RECOMMENDATION OF THE MEETING**

*Following a risk assessment, there are circumstances in which the Police may consider that the need to protect children and vulnerable adults will not be fulfilled by disclosing the information to Social Work or other agencies alone. Any decision to disclose further (e.g. to a partner in a relationship) should be made carefully on a case-by-case basis, in consultation with Social Work and with any other relevant agencies, taking into account a wide range of factors.*

*Discussions should take place as to all other options prior to any formal disclosure, e.g. self disclosure or child protection disclosure when the offender is a schedule one offender..*

*Discussion should also take place as to who should be made aware of the disclosure and why.*

*All decisions to disclose or not to disclose must be recorded*

### **DETAILS OF DISCLOSURE :**

(to whom and why)

### **ANY REQUIREMENTS TO REFER**

(provide further explanation)

CHILD PROTECTION

VULNERABLE ADULTS

ANY OTHER AGENCY

### **CONTINGENCY PLAN:**

(Emergency out of hours number etc)

### **SHOULD THE MAPPA LEVEL INCREASE OR DECREASE?**

### **DO ANY OF THE ISSUES ARISING FROM THIS CASE HAVE A WIDER SIGNIFICANCE IN RELATION TO THE STRATEGIC MANAGEMENT OF MAPPA**

### **KEY SINGLE POINT OF CONTACT:**





**Proposed Annual Report Structure**  
**Section 11 of Management of Offenders (Scotland) Act 2005**

*This template provides guidance on the preparation of the Annual Report and the required statistical information in line with Section 11 of the Management of Offenders (Scotland) Act 2005.*

*Responsible Authorities should ensure that data collection systems are in place to ensure that the required information is readily accessible and can be provided to the MAPPA Coordinator for collation into the first Annual Report, which will cover the period **up to April 2008**.*

*The provisions of Sections 10 & 11 of the Management of Offenders (Scotland) Act 2005 commenced in April 2007 for **registered sex offenders**. The information contained in the Annual Reports will therefore relate to that category of offender until the other provisions are commenced at a later date.*

**1. Introduction**

A brief statement introducing the report - emphasising importance of public protection and giving a positive message about the importance of offender management and the progress of MAPPA in Scotland.

**2. The National Picture**

A summary of developments across the country which provide the context in which the detail of the area report can be read and understood. Reference should be made to any legislative developments as well as other initiatives and broader themes.

**3. Area Summary**

The annual report should be a clear and accessible document that informs and reassures the public about the work undertaken for their protection. In this section attention should be drawn to:

- The origins of MAPPA in the area and significant operational events in the last year.
- The strategic oversight of MAPPAs and how this relates to other fora such as child/vulnerable adult protection committees. Ensure that it is clear that arrangements are subject to on-going review as required by the legislation.
- The principles underpinning public protection including:
  - The importance of developing both ‘*internal*’ controls, such as offender treatment programmes and relapse prevention programmes, and ‘*external*’ controls, such as monitoring and supervision, in the management of risk;
  - Consistent approach to risk assessment;
  - The central importance of joint working between agencies including joint training.

**4. Roles and Responsibilities**

A detailed explanation should be provided about how the MAPPA operates and the contribution made by each agency should be summarised. This should include the roles and responsibilities of Police, Social Work, the Scottish Prison Service, Health services and other agencies such as housing involved in the arrangements.

It is important to highlight that the most effective work to protect the public from sexual, violent and other dangerous offenders takes place when other relevant agencies also play their part.

## **5. The Operation of MAPPA**

- Describe the specific MAPPA structure and processes used throughout the area for the assessment and management of sexual offenders.
- It is important to include in this section anonymous case studies so that practical examples of the MAPPA work can be understood across the spectrum of risk and offending behaviour. The opportunity should also be taken to show that the majority of offenders are effectively managed through normal agency management.
- Specific reference to the ‘internal’ controls and the ‘external’ controls should be made including references to enforcement action.

From the Police perspective, reference should be made to the various means used by the Police to prevent and detect crime, and to reinforce sex offender registration (for example joint Police/Social Work visits immediately after release).

Specific reference should be made to the use of disclosure as a risk management option within the MAPPA and, where appropriate, anonymous examples given of its use.

## **6. Developments in work with high-risk offenders**

This could include details of staff training, introduction of sex offender treatment programmes, Visor, explanation as to how work with sex/high risk offenders is undertaken etc.

This section should also include an explanation about risk management and the use of risk assessment tools.

Specific reference should be made to significant issues or decisions taken during the reporting year e.g. lessons from case reviews/serious incidents/major police operations.

## **7. Victim Work**

This section should reflect the vital work undertaken with the victims of sexual and violent crime. It should highlight the measures undertaken locally through MAPPA to protect victims. Whilst referring to the work of the Police, VNS, VIA, Victim Support Scotland and other agencies, which support victims and their families, it should reflect the direct connections made between victims concerns and MAPPA around the assessment and management of risk.

## **8. Statistical Information required for the reporting period 1st April to 31<sup>st</sup> March**

### CATEGORY 1 MAPPA OFFENDERS: REGISTERED SEX OFFENDERS (RSO)

- i) The number of:
  - RSOs living in your Area on 31<sup>st</sup> March (Snap shot provided by police);
  - The number of RSOs per 100,000 of the population.
- ii) The number of sex offenders having a registration requirement who:
  - Complied with registration requirements;
  - Were reported for breaches of the requirements to register between 1<sup>st</sup> April and 31<sup>st</sup> March each year.

- iii) The number of:
- Sexual Offences Prevention Orders (SOPOs) /Risk of Sexual Harm Orders (RSHOs) applied for ;
  - Interim SOPOs/RSHOs granted; and
  - Full SOPOs/RSHOs imposed by the courts between 1<sup>st</sup> April and 31<sup>st</sup> March each year.

***Note: Although it is possible that a person who is subject of a RSHO might not have a conviction it is appropriate to record such statistical information in this report.***

- iv) The number of:
- Foreign Travel Orders applied for;
  - The number of Foreign Travel Orders imposed by the courts between the 1<sup>st</sup> April and 31<sup>st</sup> March each year.

#### OFFENDERS MANAGED THROUGH LEVELS 1, 2 OR 3 OF THE MAPPA

- v) Identify how many MAPPA offenders in each of the three categories have been managed between 1<sup>st</sup> April and 31<sup>st</sup> March as follows:
- Level 1 - single agency risk management
  - Level 2 - through inter agency risk management
  - Level 3 - MAPPP, (critical few)

***[Note: The level 1 figure should include all offenders who have been reported to the MAPPA Coordinator by the Responsible Authorities and who have not been managed at either levels 2 or 3 between the periods 1 April to 31 March.***

***The level 2 figure should include those offenders who have not been managed at level 3 at any point during the counting period.]***

- vi) Explain the significance of the statistical information and, where appropriate, provide commentary on the particular features of the statistics as they relate to your area. The following contextual analysis may be relevant:
- age
  - gender
  - ethnicity
  - sentence for index offence
  - whether or not the offender is on statutory supervision
  - age of victim.
- vii) Of the cases managed at level 2 or 3 between the 1<sup>st</sup> of April and 31<sup>st</sup> March, how many whilst managed at this level:
- were convicted of a further serious sexual or violent offence
  - were returned to custody for a breach of licence (including those returned to custody because of conviction of further serious sexual or violent offence)
  - were returned to custody for a breach of Sexual Offences Prevention Order or Risk of Sexual Harm Order
  - breached their licence but were not returned to custody

- breached their conditions of hospital discharge and were recalled to hospital
- breached their conditions of hospital discharge but were not returned to hospital
- were subject to formal disclosure

*[Note: The figure recorded above should indicate the level the offender was being managed at when the offence was committed. For these purposes a serious sexual or violent offence is one of the following:*

*Murder, attempted murder, culpable homicide, fire-raising, rape, assault with intent to rape, assault and robbery, assault with intent to rob, serious assault, abduction, any other offence which has attracted or is likely to attract significant media interest or which raises wider national issues.]*

## **9. The Scottish Prison Service**

The Scottish Prison Service will provide information that will directly relate to developments and assurance provision of the MAPPA process. The three main areas are:

- programme completion for sex offenders by establishment and CJA area.
- national training statistics for SPS staff in key areas for sex offending (programmes and DSP)
- number of completed risk assessments for prisoners with MAPPA referrals

These statistics should be reproduced in each annual report. It will however be appropriate to identify local examples of good practice and report them through this document.

## **10. Treatment Programmes**

Description of treatment programmes available within area including

- number of group work programmes which ran,
- number of offenders who engaged in treatment and
- information in relation to successful completions – use of case example to evidence range of interventions.

## **11. Summary and Forward Plans**

Brief overview of key points arising from annual report and outline of proposed future actions for the coming year.